

No. 11820

IN THE

# United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

---

TAVARES CONSTRUCTION COMPANY, INC., a  
corporation, CONCRETE SHIP CONSTRUCTORS,  
a joint venture, STROUD-SEABROOK, a copartner-  
ship, LLOYD S. STROUD, R. S. SEABROOK,  
C. M. ELLIOTT, CARLOS TAVARES, HENRY  
M. PAGE and DON F. GATES,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

*see vol. 2511*

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## TRANSCRIPT OF RECORD

(In Four Volumes)

VOLUME I

(Pages 1 to 372, Inclusive)

Upon Appeal From the District Court of the United States  
for the Southern District of California  
Southern Division

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**FILED**

MAR 12 1948

**PAUL P. O'BRIEN, CLERK**



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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In the District Court of the United States in and for the  
Southern District of California  
Southern Division

No. 248 Civil

UNITED STATES OF AMERICA,

Plaintiff,

v.

CERTAIN PARCELS OF LAND IN THE CITY OF  
NATIONAL CITY, COUNTY OF SAN DIEGO,  
STATE OF CALIFORNIA; TAVARES CON-  
STRUCTION COMPANY, INC., a corporation;  
THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY, a corporation; SAN FRAN-  
CISCO BRIDGE COMPANY, a corporation; LEON-  
ARD McLAUHLIN, Individually, and doing busi-  
ness under the name and style of McLAUHLIN  
WATER TAXI COMPANY; CARL A. JOHNSON;  
PEARL JOHNSON; SANTA FE LAND IM-  
PROVEMENT COMPANY, a corporation; SAN  
DIEGO AND ARIZONA EASTERN RAILWAY  
COMPANY, a corporation; DEFENSE PLANT  
CORPORATION, an Agency of the United States of  
America; CITY OF NATIONAL CITY, a municipal  
corporation; COUNTY OF SAN DIEGO, a body  
politic and corporate; STATE OF CALIFORNIA, a  
corporation sovereign; DOE ONE to DOE FIVE  
HUNDRED, inclusive; ONE DOE CORPORATION,  
a corporation, to TWENTY-FIVE DOE CORPORA-  
TION, a corporation, inclusive; A DOE to Z DOE,  
inclusive, each as the Administrator of the Estate or  
Executor of the Will of One Doe, Deceased, to Twenty-

six Doe, Deceased, inclusive, respectively; DOE ONE COMPANY, a copartnership, to DOE TWENTY-FIVE COMPANY, a copartnership, inclusive; and all persons, firms, corporations, and all other public and private legal entities of whatever nature, having or claiming to have any right, title, interest, or estate in or lien, encumbrance, servitude, easement, charge, demand, claim, or covenant on or in respect to the hereinafter described premises,

Defendants.

## COMPLAINT IN CONDEMNATION

Complaint Amended: 1st date: Sep. 23, 1944;

2nd date: Jan. 15, 1945 [2]

To the Honorable, the United States District Court:

Comes now the plaintiff, United States of America, by Leo V. Silverstein, United States Attorney for the Southern District of California, by C. H. Scharnikow, Special Attorney, Lands Division, Department of Justice, as its attorneys, on application of the duly authorized officer of the United States, hereinafter referred to as the "Requesting Officer," and under the direction and by authority of the Attorney General of the United States, and for cause of action against the above-named defendants, and each of them, complains and alleges:

### I.

That the plaintiff, United States of America, is entitled to acquire by the exercise of its power of eminent domain, pursuant to the statutes hereinafter set forth, the property hereinafter described for the uses and purposes hereinafter set forth.



## II.

That in accordance with the provisions of said statutes, said requesting officer for and in behalf of the United States has designated and determined that the property hereinafter described is suitable and necessary for the purposes of the United States, and has selected such property for acquisition by the United States in these proceedings, and said selection, designation, and determination ever since have been and now are in full force and effect; that the purposes for which the plaintiff is taking said property as hereinafter alleged are necessary and constitute a public use, which use is authorized by law; that the acquisition thereof by plaintiff is, and will be, of greatest public benefit and to the least private injury; that plaintiff is informed and believes, and upon such information and belief alleges, that no part of said property has heretofore been appropriated to any public use, and if any part or portion thereof has heretofore been appropriated to a public use, the use to which said property is herein sought to be condemned and appropriated is a more necessary and paramount public use. [3]

## III.

That plaintiff is informed and believes, and upon such information and belief alleges, that each parcel of property hereinafter described constitutes a whole parcel and not a part thereof, except where otherwise designated herein.

## IV.

That plaintiff has named herein by their true names, or by fictitious names, all defendants known or believed



by it to have some interest in said property; that there may be other persons having some interests therein whom the plaintiff hereby identifies as unknown persons, and makes such unknown persons defendants herein to the end that title to said property may be vested in the United States of America to the extent hereinafter prayed for.

V.

That the defendants Doe One to Doe Five Hundred, inclusive, defendants One Doe Corporation to Twenty-five Doe Corporation, inclusive, defendants Doe One Company to Doe Twenty-five Company, inclusive, and defendants A Doe to Z Doe, inclusive, each as Administrator of the Estate or Executor of the Will of One Doe, Deceased, to Twenty-six Doe, Deceased, inclusive, respectively, and said One Doe, Deceased, to Twenty-six Doe, Deceased, inclusive, are and each is sued or named herein under the fictitious names above set out for the reason that plaintiff is ignorant of the true names of said defendants or decedents; that when the true names of said defendants or decedents, or any of them, are discovered, plaintiff will amend accordingly the pleadings or proceedings herein.

That One Doe Corporation to Twenty-five Doe Corporation, inclusive, is each a corporation, organized and existing under the laws of one of the states of the United States; that Doe One Company, to Doe Twenty-five Company, inclusive, is each a copartnership duly organized and existing, and is each composed of two or more copartners; that A Doe to Z Doe, inclusive, is each the duly appointed, qualified and acting Administrator of the Estate or Executor of the Will of One Doe, Deceased, to Twenty-six Doe, Deceased, inclusive, respectively. [4]

## VI.

That this action is brought by the plaintiff under the authority of and pursuant to the provisions of the Act of Congress approved August 25, 1941 (Public Law No. 247—77th Congress), the Act of Congress approved March 5, 1942 (Public Law No. 474—77th Congress), the Act of Congress approved August 1, 1888 (25 Stat. 357, Title 40 U. S. C. Section 257), the Act of Congress approved March 27, 1942 (Public Law 507—77th Congress), being the Second War Powers Act of 1942, and acts amendatory thereof and supplementary thereto; that the "Requesting Officer" hereinbefore referred to is the Chairman of the United States Maritime Commission of the United States of America; that the purpose for which said lands are being acquired is the construction of facilities by the United States for the construction and repair of ships and the operation of such facilities for war purposes.

## VII.

That the lands sought to be condemned herein are particularly described as follows: [5]

Those Certain Parcels of Land in the City of National City, County of San Diego, State of California, More Particularly Described as Follows:

Parcel 1. That portion of the tidelands of the City of National City, California, leased by the Tavares Construction Co., Inc., (and assigned to the Defense Plant Corporation) from the City of National City, under lease dated January 1, 1942, described as follows: Beginning at a point in the U. S. Bulkhead Line, said point being situate 409.09 feet E 6° 35' 32" E of the U. S. Station No. 302 in said bulkhead line, in the City of

National City, California; N 83° 24' 28" E 1379.87 feet to a point, thence S 10° 02' 45" W 655.58 feet to a point, thence S 83° 24' 28" W 987.17 feet to a point, thence N 6° 35' 32" W 76.00 feet to a point, thence S 63° 03' 59" W 218.63 feet to a point, thence N 6° 35' 32" W 628.14 feet to the point of beginning, an area of 18.37 acres, more or less.

Parcel 2. That portion of the tidelands of the City of National City, California, leased by the Tavares Construction Co., Inc., from the City of National City, under lease dated August 17, 1942, described as follows: Beginning at a point which is situate 1037.23 feet S 6° 35' 32" E and 205.00 feet N 83° 24' 28" E from U. S. Station No. 302 in the U. S. Bulkhead Line, National City, California, thence N 83° 24' 28" E 987.17 feet to a point, thence S 10° 02' 45" W 208.74 feet to a point, thence S 83° 24' 28" W 927.40 feet to a point, thence N 6° 35' 32" W 200.00 feet to the point of beginning, an area of 4.40 acres, more or less.

Parcel 3. That portion of the tidelands of the City of National City, California, owned by the City of National City and totally unencumbered, described as follows: Beginning at a point in the U. S. Bulkhead Line of the San Diego Bay, distant S 6° 35' 32" E 2210.39 feet from bulkhead point No. 302, thence S 63° 03' 59" W 1066.51 feet to a point in the U. S. Pierhead Line, thence N 6° 35' 32" W along said pierhead line [6] 639.91 feet, thence N 63° 03' 59" E 287.98 feet to a point, thence S 6° 35' 32" E 186.64 feet to a point, thence N 63° 03' 59" E 997.16 feet to a point, thence N 6° 35' 32" W 443.89 feet to a point, thence N 83° 24' 28" E 927.40 feet to a point, thence N 10° 02' 45" E 864.32 feet to a

point, thence N 83° 24' 28" E 104.58 feet, more or less, to a point in the Mean High Tide Line (as established by George D-Hemecourt, but not adopted by the Board of State Harbor Commissioners), said point being distant S 10° 04' 15" W. 32.42 feet from point No. 40 in said mean high tide line, thence S 10° 04' 15" W along said mean high tide line 557.46 feet to point No. 41 in said mean high tide line, thence S 12° 24' 15" W along said mean high tide line 453.80 feet to point No. 42 in said mean high tide line, thence S 18° 39' 00" W along said mean high tide line 220.14 feet to point No. 43 in said mean high tide line, thence S 9° 35' 58" W 28.50 feet to a point in said mean high tide line, thence S 72° 11' 58" W 194.91 feet to a point, thence S 88° 45' 32" W 156.35 feet to a point, thence N 83° 47' 28" W 495.00 feet to a point, thence S 6° 12' 32" W. 38.00 feet to a point, thence S 83° 47' 28" E 675.00 feet to a point, thence S 73° 27' 46" E 145.73 feet, more or less, to a point in said mean high tide line, thence S 9° 35' 58" W 83.19 feet to point No. 44 in said mean high tide line, thence S 4° 50' 02" E 303.57 feet to point No. 45 in said mean high tide line, thence S 0° 27' 32" E 71.26 feet to a point in said mean high tide line, thence S 83° 24' 28" W 989.19 feet to the point of beginning, all of which contains an area of 34.02 acres, more or less.

Parcel 4. That portion of the California Southern Railway Terminal Grounds, National City, California, County of San Diego, as shown on Map of National City, California, recorded by the County Recorder of San Diego County, October 1882, and owned by the Atchison, Topeka & Santa Fe Railway Co., described as follows: Beginning at a point in the Mean High Tide Line, said point being distant S 10° 04' 15" W 282.46 feet

from point No. 40 in [7] said mean high tide line, thence S  $10^{\circ} 04' 15''$  W along said mean high tide line 307.42 feet to point No. 41 in said mean high tide line, thence S  $12^{\circ} 24' 15''$  W along said mean high tide line 453.80 feet to point No. 42 in said mean high tide line, thence S  $18^{\circ} 39' 00''$  W along said mean high tide line 220.14 feet to point No. 43 in said mean high tide line, thence S  $9^{\circ} 35' 58''$  W 164.00 feet to a point in said mean high tide line, thence S  $75^{\circ} 41' 00''$  E 52.00 feet, more or less, to a point in the northerly line of Bay Avenue, thence S  $47^{\circ} 17' 32''$  E 124.00 feet to a point in the easterly line of Bay Avenue, thence N  $1^{\circ} 43' 28''$  E 520.00 feet to a point, thence N  $6^{\circ} 25' 00''$  E 241.19 feet to a point, thence N  $10^{\circ} 04' 15''$  E 500.00 feet to a point in the center line of 14th Street, thence S  $71^{\circ} 46' 30''$  W along said center line of said 14th Street 11.36 feet to the point of beginning, all of which contains an area of 1.36 acres, more or less.

Parcel 5. That portion of the tidelands of the City of National City California, leased by the Atchison, Topeka & Santa Fe Railway Co. from the City of National City, under lease dated March 21, 1921, described as follows: Beginning at a point in the Mean High Tide Line of San Diego Bay (as established by George D-Hemecourt, but not adopted by the Board of State Harbor Commissioners), said point being distant S  $9^{\circ} 35' 58''$  W 28.50 feet from point No. 43 in said mean high tide line, thence S  $72^{\circ} 11' 58''$  W 194.91 feet to a point, thence S.  $88^{\circ} 45' 32''$  W 156.35 feet to a point, thence N  $83^{\circ} 47' 28''$  W 495.00 feet to a point, thence S  $6^{\circ} 12' 32''$  W 38.00 feet to a point, thence S  $83^{\circ} 47' 28''$  E 675.00 feet to a point, thence S  $73^{\circ} 27' 46''$  E 145.73 feet, more or less, to a point in said mean high tide line, thence along



said mean high tide line N 9° 35' 58" E 164.00 feet to the point of beginning, an area of 1.03 acres, more or less.

Parcel 6. That portion of the California Southern Railway Terminal Grounds as shown on map of National City, California, recorded October, 1882, and condemned for Bay Avenue by the City of National City, September 26, 1902, [8] described as follows: Beginning at a point in the easterly line of Bay Avenue, said point being distant N 0° 16' 32" W 234.62 feet from the southeasterly corner of 19th Street and Bay Avenue, thence N 0° 16' 32" W along said southeasterly line of Bay Avenue 111.59 feet to a point, thence N 1° 43' 28" E along said southeasterly line of Bay Avenue 227.00 feet to a point, thence N 47° 17' 32" W 124.00 feet along the northerly line of said Bay Avenue to a point, thence N 75° 41' 0" W 52.00 feet, more or less, to a point in the Mean High Tide Line of San Diego Bay (as established by George d-Hemecourt, but not adopted by the Board of State Harbor Commissioners), said point being distant S 9° 35' 58" W 192.50 feet from point No. 43 in said mean high tide line, thence S 9° 35' 58" W along said mean high tide line 83.19 feet to point No. 44 in said mean high tide line, thence S 4° 50' 02" E along said mean high tide line 303.57 feet to point No. 45 in said mean high tide line, thence S 0° 27' 32" E along said mean high tide line 71.26 feet to a point, thence N 83° 24' 28" E 116.69 feet to the point of beginning, an area of 1.23 acres, more or less.

Parcel 7. That portion of the tidelands of the City of National City, California, leased by the San Francisco Bridge Co. from the City of National City, under lease dated January 1, 1941, described as follows: Beginning

at a point in the U. S. Bulkhead Line of San Diego Bay, said point being distant S 6° 35' 32" E. 1037.23 feet from bulkhead point No. 302, thence N 63° 03' 59" E 218.64 feet to a point, thence S 6° 35' 32" E 719.89 feet to a point, thence S 63° 03' 59" W 933.17 feet to a point, thence N 6° 35' 32" W 186.64 feet to a point, thence N 63° 03' 59" E 714.54 feet to a point, thence N 6° 35' 32" W 533.25 feet to the point of beginning, an area of 6.26 acres, more or less.

Parcel 8. That portion of the tidelands of the City of National City, California, leased by Leonard McLaughlin from the City of National City, under lease dated December 2, 1941, described as follows: Beginning at a point in the U. S. Bulkhead Line of San Diego Bay, said point being distant S 6° 35' 32" E 1570.48 feet from bulkhead point No. 302, thence S 63° 03' 59" W 714.54 feet to the true point of beginning of this description, thence continuing S 63° 03' 59" W 63.99 feet to a point, thence S 6° 35' 32" E 186.64 feet to a point, thence N 63° 03' 59" E 63.99 feet to a point, thence N 6° 35' 32" W 186.84 feet to the true point of beginning, an area of 0.26 acres, more or less.

Parcel 9. That portion of Block 271, National City, California, County of San Diego, as shown on the Map of National City, California, recorded by the County Recorder of San Diego County, October 1882, leased by the Tavares Construction Co., Inc., from Carl A. Johnson and Pearl Johnson under lease dated June 5, 1942, described as follows: Beginning at the intersection of the center line of 14th Street (80 feet wide) (vacated) and the westerly line of Cleveland Avenue (100 feet wide); thence along said center line of 14th Street (va-

cated) S 71° 46' 30" W 250.00 feet more or less, to the intersection of the easterly line of Harrison Avenue (40 feet wide), thence along said easterly line S 18° 13' 30" E 165.00 feet to a point, thence N 71° 46' 30" E 135.00 feet to a point, thence S 18° 13' 30" E 125.00 feet more or less to the northerly line of 15th Street (80 feet wide), thence along said northerly line N 71° 46' 30" E 25.00 feet to a point, thence N 18° 13' 30" W 125.00 feet to a point, thence N 71° 46' 30" E 90.00 feet more or less to the westerly line of Cleveland Avenue, thence along said westerly line N 18° 13' 30" W 165.00 feet to the point of beginning, an area of 1.02 acres, more or less.

Parcel 10. That portion of Block 270, National City, California, County of San Diego, as shown on the Map of National City, California, recorded by the County Recorder of San Diego County, October 1882, owned by the Atchison, Topeka & Santa Fe Improvement Co., and leased to the Tavares Construction Co., Inc., under lease dated August 4, 1942, described as follows: Beginning at the southwesterly corner of 13th Street (80 feet [10] wide) and Cleveland Avenue (100 feet wide), thence S 71° 46' 30" W 142.59 feet along the southerly line of said 13th Street to a point, said point being distant S 71° 46' 30" W 7.59 feet from the westerly line of a vacated alley (20 feet wide), thence S 3° 27' 45" E 258.74 feet more or less to a point in the northerly line of 14th Street (80 feet wide) (vacated), thence S 18° 13' 30" E 40.00 feet to the center line of said vacated 14th Street, thence along said center line N 71° 46' 30" E 208.52 feet more or less to the westerly line of said Cleveland Avenue, thence along said westerly line of



Cleveland Avenue N  $18^{\circ} 13' 30''$  W 290.20 feet to the point of beginning, an area of 1.20 acres, more or less.

Parcel 11. That portion of Block 270, National City, California, County of San Diego, as shown on the Map of National City, California, recorded by the County Recorder of San Diego County, October 1882, leased from the San Diego and Arizona Eastern Railway, Inc., by the Tavares Construction Co., Inc., under lease dated September 16, 1942, described as follows: Beginning at a point in the southerly line of 13th Street (80 feet wide), said point being distant S  $71^{\circ} 46' 30''$  W 7.59 feet from the westerly line of a vacated alley (20 feet wide), thence S  $3^{\circ} 27' 45''$  E 258.74 feet, more or less, to a point in the northerly line of 14th Street (80 feet wide) (vacated), said point being distant S  $71^{\circ} 46' 30''$  W 73.52 feet from the westerly line of said vacated alley (20 feet wide), thence S  $18^{\circ} 13' 30''$  E 40.00 feet to the center line of 14th Street (80 feet wide) (vacated), thence S  $71^{\circ} 46' 30''$  W along said center line 41.48 feet to a point, thence N  $18^{\circ} 13' 30''$  W 40.00 feet to a point in the northerly line of said 14th Street (vacated), thence N  $71^{\circ} 46' 30''$  W 0.08 feet along the northerly line of 14th Street, thence N  $3^{\circ} 27' 45''$  W 150.43 feet to a point, thence N  $5^{\circ} 52' 50''$  E 114.73 feet to a point in the southerly line of 13th Street (80 feet wide), thence along said southerly line of 13th Street N  $71^{\circ} 46' 30''$  [11] E 22.14 feet to the point of beginning, an area of 0.05 acres, more or less. [12]

### VIII.

That the estate or interest in said lands hereinbefore described which plaintiff intends and seeks to take, acquire, condemn, hold, and own by this proceeding is the

fee simple title thereto, with the right of immediate possession thereof for the purpose of occupying, using and improving the same pursuant to the authority of the Second War Powers Act.

### IX.

That under the provisions of the Second War Powers Act approved March 27, 1942 (Public Law 507, 77th Congress), it is provided in part as follows:

“Upon or after the filing of the Condemnation Petition immediate possession may be taken and the property may be occupied, used, and improved for the purposes of the Act, notwithstanding any other law”;

That plaintiff, United States of America, is now in a state of war, and immediate possession of the real property hereinbefore described is necessary.

### X.

That the apparent and presumptive owners of the lands hereinbefore described are the defendants Tavares Construction Company, Inc., a corporation; The Atchison, Topeka and Santa Fe Railway Company, a corporation; San Francisco Bridge Company, a corporation; Leonard McLauchlin, Individually, and doing business under the name and style of McLauchlin Water Taxi Company; Carl A. Johnson; Pearl Johnson; Santa Fe Land Improvement Company, a corporation; San Diego and Arizona Eastern Railway Company, a corporation; Defense Plant Corporation, an Agency of the United States of America; that the defendants, City of National City, a municipal corporation; County of San Diego, a body politic and corporate; State of California, a corporation sovereign; Doe One to Doe Five Hundred, inclusive, One

Doe Corporation, a corporation, to Twenty-five Doe Corporation, a corporation, inclusive; [13] A Doe to Z Doe, inclusive, each as the Administrator of the Estate or Executor of the Will of One Doe, Deceased, to Twenty-six Doe, Deceased, inclusive, respectively, Doe One Company, a copartnership, to Doe Twenty-five Company, a copartnership, inclusive, each claims some right, title, interest, or lien in, to, or upon the said real property hereinbefore described, or some part thereof, the exact nature of which such claim or claims is unknown to plaintiff.

# XI.

That the defendant, City of National City, is a municipal corporation organized and existing under and by virtue of the laws of the State of California; that the defendant, County of San Diego, is a body politic and corporate, organized and existing under and by virtue of the laws of the State of California; that the defendant, State of California, is a corporation sovereign and one of the states composing the United States of America;

That the defendants, Tavares Construction Company, Inc., San Francisco Bridge Company, and Santa Fe Land Improvement Company, are, and each of said defendants is, a corporation organized and existing under and by virtue of the laws of the State of California;

That the defendant, The Atchison, Topeka and Santa Fe Railway Company, is a corporation organized and existing under and by virtue of the laws of the State of Kansas;

That the defendant, San Diego and Arizona Eastern Railway Company, is a corporation organized and exist-

ing under and by virtue of the laws of the State of Nevada;

That the defendant, Leonard McLauchlin, is an individual doing business under the fictitious firm name and style of McLauchlin Water Taxi Company;

That the defendant, Defense Plant Corporation, is a corporation organized and existing under and by virtue of the laws of the United States, and is an instrumental-ity or agency of the United States of America. [14]

Wherefore, plaintiff prays judgment:

1. That the Court ascertain and assess the value of the lands herein sought to be taken and condemned, and each and every separate estate or interest therein;

2. Adjudging that the public use for which plaintiff takes and condemns said lands is a necessary public use of the plaintiff and that the use to which said lands are being applied is a use authorized by law and that all of said lands are necessary thereto;

3. Vesting in the United States of America the fee simple title to the lands hereinbefore described, to be utilized for construction of facilities by the United States for the construction and repair of ships and the operation of such facilities for war purposes, and for such other uses as may be authorized by Congress or by Executive Order, and that the said lands shall be deemed to be condemned and taken for the use of the United States of America for the uses and purposes hereinbefore set forth; and

Further adjudging that the right to just compensation for the taking of said lands hereinbefore described be vested in the persons entitled thereto as their respective

interests may appear and be established and adjudged herein;

4. That all liens or encumbrances of record against the property herein sought to be taken and condemned be satisfied out of the award to be made in this proceeding;

5. That an order be made for the delivery of immediate possession of said lands to the United States of America pursuant to the provisions of the Acts of Congress hereinbefore set forth, and that an order be made for the notice to be given of such order for possession; [15]

6. For such other and further relief as the Court deems meet and proper in the premises and as the nature of the case may require.

Dated: This 10th day of November, 1942.

LEO V. SILVERSTEIN

United States Attorney

C. H. SCHARNIKOW

Special Attorney

Lands Division

Department of Justice

By C. H. Scharnikow

Attorneys for Plaintiff

[Endorsed]: Filed Nov. 10, 1942. Edmund L. Smith,  
Clerk. [16]



[Title of District Court and Cause]

AFFIDAVIT IN SUPPORT OF ORDER FOR POSSESSION UNDER SECOND WAR POWERS ACT

State of California

County of San Diego—ss.

Neil J. Allinger, being first duly sworn, deposes and says:

That he is the Resident Plant Engineer of the United States Maritime Commission, in charge of construction of facilities for shipbuilding purposes, upon the lands involved in the within action, and makes this affidavit in such capacity;

That affiant has personally viewed and examined, and is familiar with, the lands described in plaintiff's Complaint and described therein as Parcels 1 to 11 inclusive;

That the lands described as Parcels 1 and 2 are leased by the City of National City to the Tavares Construction Company, Inc., and are occupied by the said Tavares Construction Company, Inc. for shipbuilding purposes; that Parcels 9, 10, and 11 are leased by Carl A. Johnson and [17] Pearl Johnson, by the Santa Fe Land Improvement Company, and by the San Diego and Arizona Eastern Railway Company, respectively, to Tavares Construction Company, Inc., and are occupied and used by the said Tavares Construction Company, Inc. for shipbuilding purposes;

That the title to the real property designated as Parcel 3 is vested in the City of National City, and Parcel 6 consists of a portion of a vacated street formerly known

as Bay Avenue; that the said Parcel 3 is being used and occupied by Tavares Construction Company, Inc., and Parcel 6 is used and occupied by the said Tavares Construction Company, Inc., and the defendant The Atchison, Topeka, and Santa Fe Railway Company; that there are no improvements located upon the said Parcel 3 and 6 or either of them.

That the property designated as Parcel 7 is leased from the City of National City to the defendant San Francisco Bridge Company, and is being used and occupied by the Tavares Construction Company, Inc., with the permission of said San Francisco Bridge Company, and is also being used to some extent by the said San Francisco Bridge Company for the purpose of storage of materials thereon, said parcel being improved only with a shack and pier; that Parcel 8 is leased by the City of National City to the defendant Leonard McLauchlin, doing business as McLauchlin Water Taxi Company, but the said Parcel 8 is unimproved and is unoccupied by the said Leonard McLauchlin or by any person other than Tavares Construction Company, Inc.;

That Parcel 4 is owned and occupied by the defendant, The Atchison, Topeka and Santa Fe Railway Company, and Parcel 5 is leased by the said The Atchison, Topeka and Santa Fe Railway Company from the City of National City, and is occupied by said defendant railway company; that there are located upon said Parcels 4 and 5 railroad tracks used by the said railway company in connection with a certain Wye, or turn-around track; that there are no dwellings or other structures upon any of the said real property except the said railroad tracks upon Parcels 4 and 5, a shack on Parcel 9, [18] and

the shack and pier upon Parcel 7, which is used as a tool shed by a storage yard attendant;

That the possession of the said real property which is herein prayed is requested for the use of Tavares Construction Company, Inc. in furtherance of shipbuilding construction and activities of said Tavares Construction Company, Inc. and the United States Maritime Commission; that immediate possession of the real property designated as Parcels 1, 2, 3, 6, 7, 8, 9, 10, and 11, which said parcels are occupied by the said Tavares Construction Company, Inc., either by lease from the City of National City or other persons, or by the permission and consent of the owners or lessees thereof, is necessary and imperative; that the use to be made by plaintiff and the said Tavares Construction Company, Inc. of Parcels 4 and 5 will require the removal and relocation of the railroad tracks hereinbefore referred to, and plaintiff prays for an order of this Court for the possession of the said Parcels 4 and 5 upon the expiration of thirty (30) days from the making of an order by this Court for the possession thereof.

NEIL J. ALLINGER

Subscribed and sworn to before me this 10th day of November, 1942.

(Seal)

WM. J. ADAMS

Notary Public in and for the County of San Diego,  
State of California

My Commission Expires Feb. 21, 1944.

[Endorsed]: Filed Nov. 10, 1942. Edmund L. Smith,  
Clerk. [19]



[Title of District Court and Cause]

ORDER FOR POSSESSION UNDER SECOND  
WAR POWERS ACT

Upon reading and filing the Complaint in Condemnation in the within action and the Affidavit of Neil J. Allinger, and upon application of Leo V. Silverstein, United States Attorney for the Southern District of California, and C. H. Scharnikow and Wm. J. Adams, Special Attorneys, Lands Division, Department of Justice, attorneys for plaintiff, for an order for possession of the property described in said Complaint, pursuant to the Second War Powers Act of 1942 approved March 27, 1942 (Public Law 507, 77th Congress), and good cause appearing therefor,

It is Hereby Ordered, Adjudged, and Decreed that plaintiff, United States of America, be and it hereby is granted immediate possession of all of the lands described in plaintiff's Complaint herein as Parcels 1, 2, 3, 6, 7, 8, 9, 10, and 11, with the right to occupy, use, and improve the same pursuant to the authority of the Second War Powers Act; and it is further ordered that plaintiff be, and it hereby is, granted [20] the possession of the real property described in said Complaint as Parcels 4 and 5 upon the expiration of thirty (30) days from the date of this Order, with the right at said time to use, occupy, and improve the said Parcels 4 and 5.

It Is Further Ordered that notice of the making and filing of this Order be given to the defendants, City of

National City, Carl A. Johnson and Pearl Johnson, Santa Fe Land Improvement Company, San Diego and Arizona Eastern Railway Company, San Francisco Bridge Company, Leonard McLauchlin, and The Atchison, Topeka, and Santa Fe Railway Company, either by personal service of the same upon the said defendants, or by mailing, addressed to said defendants at their post office, business, or residence addresses.

The real property herein referred to is more particularly described upon the sheets herein annexed marked "Exhibit A" and made a part hereof, to which reference is hereby made.

Dated: This 10th day of November, 1942, at 4:30 o'clock P. M.

JEREMIAH NETERER

United States District Judge

Presented by:

LEO V. SILVERSTEIN

United States Attorney

C. H. SCHARNIKOW

WM. J. ADAMS

Special Attorneys

Lands Division, Department of Justice

By C. H. Scharnikow

Attorneys for Plaintiff [21]

EXHIBIT "A"

Those Certain Parcels of Land in the City of National City, County of San Diego, State of California, More Particularly Described as Follows:

Parcel 1. [Description not printed as it is same as set forth in Complaint on page 6.]

Parcel 2. [Description not printed as it is same as set forth in Complaint on page 7.]

Parcel 3. [Description not printed as it is same as set forth in Complaint on page 7.] [22]

Parcel 4. [Description not printed as it is same as set forth in Complaint on page 8.] [23]

Parcel 5. [Description not printed as it is same as set forth in Complaint on page 9.]

Parcel 6. [Description not printed as it is same as set forth in Complaint on page 10.] [24]

Parcel 7. [Description not printed as it is same as set forth in Complaint on page 10.]

Parcel 8. [Description not printed as it is same as set forth in Complaint on page 11.] [25]

Parcel 9. [Description not printed as it is same as set forth in Complaint on page 11.]

Parcel 10. [Description not printed as it is same as set forth in Complaint at page 12.] [26]

Parcel 11. [Description not printed as it is same as set forth in Complaint on page 13.] [27]

[Endorsed]: Filed Nov. 10, 1942. Edmund L. Smith, Clerk. [28]

[Title of District Court and Cause]

## AMENDMENT TO COMPLAINT IN CONDEMNATION

Comes now the plaintiff, United States of America, by Eugene D. Williams, Special Assistant to the Attorney General, and Wm. J. Adams, Special Attorney, Lands Division, Department of Justice, and as and for an amendment to VII of plaintiff's Complaint in Condemnation herein, alleges:

### I.

That since the filing of plaintiff's Complaint in Condemnation herein, E. S. Land, Chairman of the United States Maritime Commission of the United States of America, referred to in said Complaint as the "Requesting Officer", has requested that said Complaint be amended for the purpose of acquiring an additional 30.92 acres of land adjacent to and contiguous with the lands described in said Complaint.

The said additional parcel of land is described as follows:

### PARCEL "A"

That portion of the tidelands lying between the U. S. Bulkhead Line and Pierhead Line of San Diego Bay, [31] National City, County of San Diego, California, described as follows:

Beginning at a point in the U. S. Bulkhead Line of San Diego Bay, said point being distant S 6° 35' 32" E 409.09 feet from bulkhead point #302; thence S 6° 35' 32" E along said bulkhead line 1161.39 feet to a point; thence S 63° 03' 59" W 1066.51 feet to

a point in the U. S. Pierhead Line; thence N 6° 35' 32" W along said pierhead line 1532.13 feet; thence N 83° 24' 28" E 1000.00 feet to the point of beginning, containing an area of 30.92 acres, more or less.

## II.

That the estate or interest in the land hereinbefore described which plaintiff by this action intends to take, acquire, condemn, hold and own is the fee simple title thereto.

## III.

That the additional taking provided herein is brought by the plaintiff under the authority of and pursuant to the provisions of the Act of Congress approved August 1, 1888 (25 Stat. 357, Title 40, U. S. C. Section 257); the Act of Congress approved March 27, 1942 (Public Law 507, 77th Congress); the Act of Congress known and described as Public Law 247, 77th Congress, approved August 25, 1941; the Act of Congress approved March 5, 1942 (Public Law 474, 77th Congress); the Merchant Marine Act of 1936, as amended, and any Acts supplementary thereto and amendatory thereof; that the purpose for which the lands hereinbefore described is taken is for the construction and repair of ships for war purposes.

## IV.

That this Amendment to Complaint in Condemnation is filed under the provisions of the Second War Powers Act of 1942, approved March 27, [32] 1942 (Public Law 507, 77th Congress) which provides in part as follows:

“Upon or after the filing of the condemnation petition, immediate possession may be taken and the

property may be occupied, used, and improved for the purposes of the Act, notwithstanding any other law"; that a state of war exists, and immediate possession of said land is necessary.

V.

That the apparent and presumptive owners of the land hereinbefore described are the City of National City, a municipal corporation, and the State of California, a corporation sovereign.

VI.

That the defendant City of National City is a municipal corporation organized and existing under and by virtue of the laws of the State of California;

That the defendant State of California is a corporation sovereign.

Wherefore, plaintiff prays that the fee simple title to the lands hereinbefore described be declared to be vested in the United States of America, and for the relief prayed for in plaintiff's Complaint herein.

Dated: This 22d day of September, 1944.

EUGENE D. WILLIAMS

Special Assistant to the Attorney General

WM. J. ADAMS

Special Attorney Lands Division

Department of Justice

By Wm. J. Adams

Attorneys for Plaintiff

[Endorsed]: Filed Sep. 23, 1944. Edmund L. Smith,  
Clerk. [33]



[Title of District Court and Cause]

ORDER FOR IMMEDIATE POSSESSION

Upon reading and filing the Amendment to Complaint in Condemnation in the within action, and the Affidavit of Wm. J. Adams, and upon application of Eugene D. Williams, Special Assistant to the Attorney General, and Wm. J. Adams, Special Attorney, Lands Division, Department of Justice, attorneys for plaintiff, for an order for the immediate possession of the property described in said Amendment to Complaint, pursuant to the Second War Powers Act approved March 27, 1942 (Public Law 507, 77th Congress), and good cause appearing therefor,

It Is Hereby Ordered, Adjudged and Decreed that plaintiff, United States of America, have immediate possession of all of the land particularly described in plaintiff's Amendment to Complaint [34] herein, designated as Parcel "A", and of the whole thereof.

Dated: This 23rd day of September, 1944, at 9:58 o'clock, A. M.

PAUL J. McCORMICK

United States District Judge

Presented by:

EUGENE D. WILLIAMS

Special Assistant to the Attorney General

WM. J. ADAMS

Special Attorney, Lands Division

Department of Justice

By Wm. J. Adams

Attorneys for Plaintiff

[Endorsed]: Filed Sep. 23, 1944. Edmund L. Smith,  
Clerk. [35]

[Title of District Court and Cause]

## DECLARATION OF TAKING NO. 1

To the Honorable

The United States District Court:

Whereas the land and improvements which constitute the subject matter of this Declaration and included in the above-entitled proceedings has heretofore been made available for public use by the United States of America by virtue of an order of this Honorable Court; and

Whereas the United States Maritime Commission has made a determination as to the estimated just compensation for the property hereinafter described and is therefore prepared to have title thereto vest absolutely and in fee simple in the United States of America upon the filing of this Declaration in said proceedings.

Now, Therefore, the United States of America and the United States Maritime Commission acting by and through E. S. Land, Chairman of the United States Maritime Commission under and by virtue of the provisions of Title II of the Second War Powers Act, 1942; Public Law No. 247, 77th Congress approved August 25, 1941; the Act of Congress known and described as Public Law No. 474, 77th Congress, approved March 5, 1942; the Merchant Marine Act, 1936, as amended, and the Act of Congress approved February 26, 1931 (46 Stat. 1421) do hereby make and cause to be filed this Declaration [36] of taking pursuant to said Acts of Congress and by vir-

tue and authority thereto do declare that the land described in Schedule "A", attached hereto and made a part hereof, and which is a part of the same land described in the petition filed in this proceedings, and the fee simple title thereto are hereby taken under the authority of said Acts of Congress, and that the public use for which said land is taken is for the construction of facilities to be used in the construction and repair of ships and the operation of such facilities, and the estate hereby taken in said land for the public use aforesaid is in fee simple absolute, excepting, however, all of the right, title and interest of the United States of America in and to said real estate, including the ownership of all improvements, fixtures and personalty located thereon or in any way appertaining thereto which have heretofore vested in the United States under and by virtue of the terms of any and all leases entered into by Tavares Construction Company, Inc., its successors or assigns, as lessee, to any and all of the land described in said Schedule "A", and under and by virtue of the terms of any and all contracts between the United States of America and the Tavares Construction Company, Inc., its successors or assigns, for the construction of facilities to be used in the construction and repair of ships and the operation of such facilities.

The United States Maritime Commission hereby states that the sum of money estimated by it as just compensation for the land and improvements thereon hereby taken is \$116,540.00. Said estimated just compensation is allocated as set forth in Schedule "B", attached hereto

and hereby made a part hereof. The United States Maritime Commission hereby deposits in the registry of this Honorable Court for the use of the persons entitled thereto, the amount of estimated compensation set forth in said Schedule "B", and is of the opinion that the ultimate award of damages for the taking of said property will be within the limits prescribed by Congress to be paid as a price therefor.

In Witness Whereof, the petitioner, United States of America has caused this Declaration to be signed in the name of the United States [37] Maritime Commission, the authority empowered by law to acquire the land described in the petition, by its Chairman, E. S. Land, thereunto duly authorized on this 28th day of Sept., 1944, in the City of Washington, District of Columbia.

UNITED STATES MARITIME COMMISSION

By E. S. Land

Chairman

Attest:

JOHN R. TANKARD

Acting Assistant Secretary [38]

SCHEDULE "A"

Those certain parcels of land in the City of National City, County of San Diego, State of California, more particularly described as follows:

Parcel No. 2. [Description not printed as it is same as set forth in Complaint on page 7.]

Parcel No. 3. [Description not printed as it is same as set forth in Complaint on page 7.] [39]

Parcel No. 4. [Description not printed as it is same as set forth in Complaint on page 8.] [40]

Parcel No. 5. [Description not printed as it is same as set forth in Complaint on page 9.]

Parcel No. 6. [Description not printed as it is same as set forth in Complaint on page 10.] [41]

Parcel No. 7. [Description not printed as it is same as set forth in Complaint on page 10.]

Parcel No. 8. [Description not printed as it is same as set forth in Complaint on page 11.] [42]

Parcel No. 9. [Description not printed as it is same as set forth in Complaint on page 11.]

Parcel No. 10. [Description not printed as it is same as set forth in Complaint on page 12.] [43]

Parcel No. 11. [Description not printed as it is same as set forth in Complaint on page 13.] [44]

## PARCEL "A"

That portion of the tidelands lying between the U. S. Bulkhead Line and Pierhead Line of San Diego Bay, National City, County of San Diego, California, described as follows:

[Description not printed as it is same as set forth in Amendment to Complaint at page 24.] [45]

(Photostats)

## SCHEDULE "B"

<u>Parcel Number</u>	<u>Ostensible Owner</u>	<u>Estimated Just Compensation</u>
2, 3, 5, 6, 7, 8 and A	City of National City	\$106,240.
4	Atchison, Topeka & Santa Fe Railway Company	6,000.
9	Carl A. Johnson & Pearl Johnson	2,100.
10	Santa Fe Land Improvement Company	1,900.
11	San Diego and Arizona Eastern Railway, Inc.	300.

[Endorsed]: Filed Oct. 3, 1944. Edmund L. Smith,  
Clerk. [48]



**•V. FORTING**

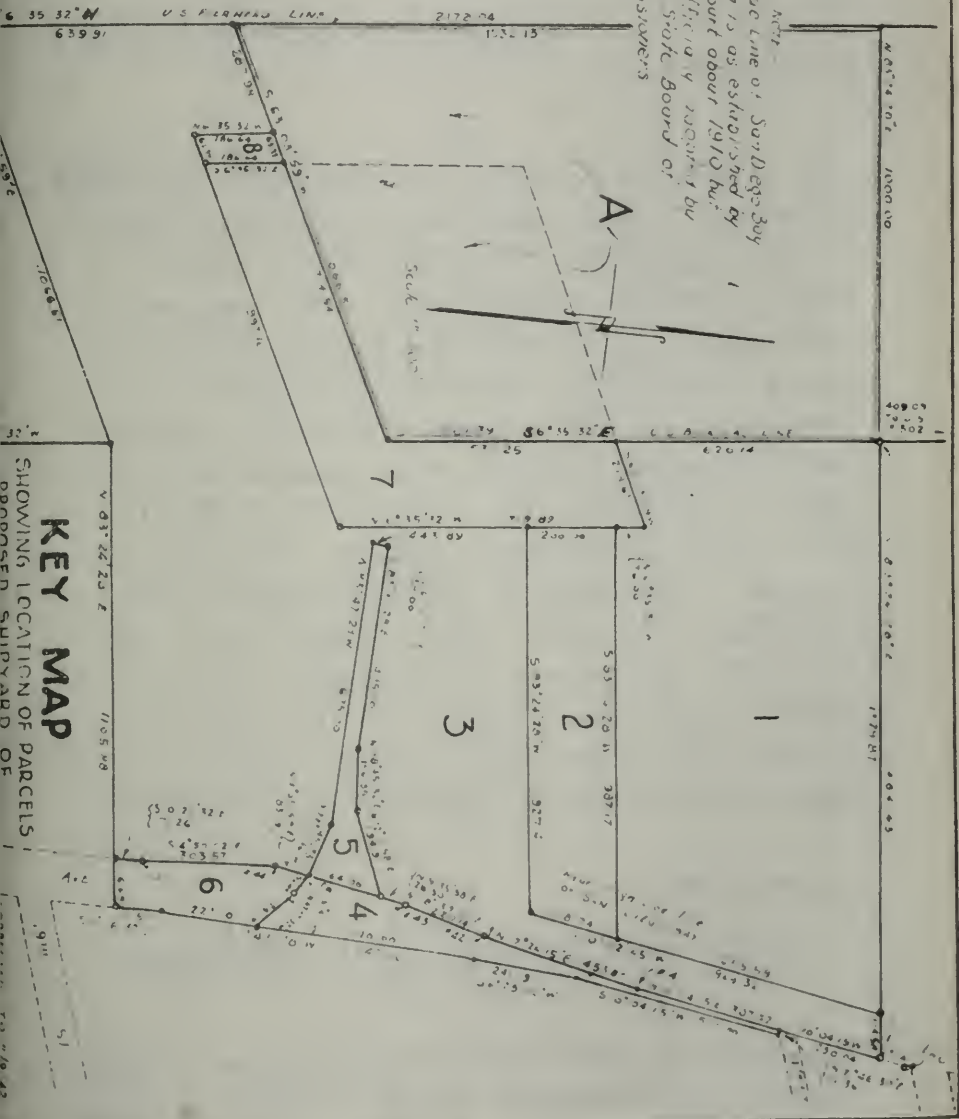


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# CHANNEL - SAN DIEGO BAY

The Mean High Tide Line of San Diego Bay as shown hereon is as established by George D. Hemelourt about 1910 but has not been officially recognized by the California State Board of Harbor Commissioners.





In the District Court of the United States in and for the  
Southern District of California

Southern Division

No. 248-SD Civil

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CERTAIN PARCELS OF LAND in the City of National City, County of San Diego, State of California; TAVARES CONSTRUCTION COMPANY, INC., a corporation; THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a corporation; SAN FRANCISCO BRIDGE COMPANY, a corporation; LEONARD McLAUCHLIN, Individually, and doing business under the name and style of McLAUCHLIN WATER TAXI COMPANY; CARL A. JOHNSON; PEARL JOHNSON; SANTA FE LAND IMPROVEMENT COMPANY, a corporation; SAN DIEGO AND ARIZONA EASTERN RAILWAY COMPANY, a corporation; CITY OF NATIONAL CITY, a municipal corporation; COUNTY OF SAN DIEGO, a body politic and corporate; STATE OF CALIFORNIA, a corporation sovereign; et al.,

Defendants.

DECREE ON DECLARATION OF TAKING  
NO. 1 [49]

Comes now the plaintiff, United States of America, by Eugene D. Williams, Special Assistant to the Attorney General of the United States of America, and Wm. J. Adams, Special Attorney, Lands Division, Department of

Justice, and moves the Court to enter a Decree on Declaration of Taking No. 1 filed in the above entitled action on October 3, 1944, and for an order ratifying, confirming and continuing in the United States of America the possession of the real property herein described, granted to plaintiff upon the filing of plaintiff's complaint herein, and upon consideration thereof and of the Complaint in Condemnation filed herein, said Declaration of Taking No. 1 and the statutes in such cases made and provided, the Court finds and decrees as follows:

First: That the United States of America is entitled to acquire property by eminent domain for the purposes as set out and prayed for in said complaint;

Second: That a complaint in condemnation was filed at the request of the United States Maritime Commission, acting by and through E. S. Land, Chairman of the United States Maritime Commission, the authority empowered by law to acquire the property described in said complaint, and also under the authority of the Attorney General of the United States;

Third: That said complaint in condemnation and Declaration of Taking No. 1 state the authority under which, and the public use for which, said property was taken; that the United States Maritime Commission is duly authorized and empowered by law to acquire property such as is described in the complaint, for the public use as provided for in the Acts of Congress hereinafter set forth, and that the Attorney General of the United States is the person authorized by law to direct the institution of such condemnation proceedings;



Fourth: That a proper description of the lands sought to be taken, sufficient for identification, is set out in said Declaration of Taking No. 1;

Fifth: That a statement of each estate or interest in said lands taken for said public use is set out in said Declaration of Taking No. 1; [50]

Sixth: That a plat or plan showing the lands taken is annexed to and incorporated in said Declaration of Taking No. 1;

Seventh: That a statement is contained in said Declaration of Taking No. 1 and set forth in Schedule "B" annexed thereto, of a sum of money estimated by said Acquiring Authority to be just compensation for the taking of said lands in the amount of One Hundred Sixteen Thousand, Five Hundred and Forty Dollars (\$116,540.00), and that said sum was deposited in the Registry of this court for the use of the persons entitled thereto, upon and at the time of the filing of said Declaration of Taking No. 1;

Eighth: That there is a statement in said Declaration of Taking No. 1 that the estimated ultimate award of compensation for the taking of said lands, in the opinion of the United States Maritime Commission, will be within the limits prescribed by Congress to be paid as a price therefor.

And the Court having fully considered said complaint in condemnation the Declaration of Taking No. 1 and the statutes in such cases made and provided, is of the opinion that the United States of America is entitled to take the property hereinafter described and to have the estate or interest hereinafter set forth vested in it pursuant to and in accordance with the Act of Congress ap-

proved February 26, 1931 (46 Stat. 1421, 40 U. S. C. Sec. 258a), and acts supplementary thereto and amendatory thereof, and under the further authority of the Act of Congress approved August 25, 1941 (Public Law 247—77th Congress), the Act of Congress approved March 5, 1942 (Public Law 474—77th Congress), the Merchant Marine Act of 1936, as amended, and the Act of Congress approved March 27, 1942 (Public Law 507—77th Congress).

It Is Therefore Ordered, Adjudged and Decreed that the fee simple title to the lands hereinafter described, excepting, however, all of the right, title, and interest of the United States of America in and to said real estate, including the ownership of all improvements, fixtures and personalty located thereon or in any way appertaining thereto which have heretofore vested in the United States of America under and by virtue of the terms of any and all leases entered into by Tavares Construction Company, Inc., a corporation, its successors [51] or assigns, for the construction of facilities to be used in the construction and repair of ships and the operation of such facilities, be and hereby is vested in the United States of America, and said lands are deemed to be condemned and taken, and are condemned and taken for the use of the United States of America, and the right to just compensation for the same is vested in the persons entitled thereto when said compensation shall be ascertained and awarded in this proceeding, and established by judgment thereunder, pursuant to law.

The lands so condemned and taken are particularly described upon the sheets hereto annexed marked Schedule "A" and by this reference made a part hereof.

It appearing that the plaintiff is in possession and occupancy of the lands herein condemned by virtue of said complaint in condemnation and amendment thereto, and the orders of this court dated November 10, 1942 and September 23, 1944, respectively, and on file herein,

It Is Further Ordered, Adjudged, and Decreed that the possession heretofore granted to plaintiff of the said real property, and the whole thereof, heretofore granted by said orders, be and the same is hereby ratified, confirmed, and continued.

Nothing herein is to be considered as a determination by the Court that the estimate of the United States Maritime Commission, or the amount deposited, is or is not just compensation for the taking by the plaintiff of the herein described property.

This cause is held open for such other and further orders, judgments, and decrees as may be necessary in the premises.

Dated: This 3rd day of October, 1944, at 3 o'clock P. M.

PAUL J. McCORMICK  
United States District Judge

Presented by:

EUGENE D. WILLIAMS

Special Assistant to the Attorney General

WM. J. ADAMS

Special Attorney, Lands Division

Department of Justice

By Eugene D. Williams

Attorneys for Plaintiff [52]

SCHEDULE "A"

Those certain parcels of land in the City of National City, County of San Diego, State of California, more particularly described as follows:

Parcel No. 2. [Description not printed as it is same as set forth in Complaint on page 7.]

Parcel No. 3. [Description not printed as it is same as set forth in Complaint on page 7.] [53]

Parcel No. 4. [Description not printed as it is same as set forth in Complaint on page 8.] [54]

Parcel No. 5. [Description not printed as it is same as set forth in Complaint on page 9.]

Parcel No. 6. [Description not printed as it is same as set forth in Complaint on page 10.] [55]

Parcel No. 7. [Description not printed as it is same as set forth in Complaint on page 10.]

Parcel No. 8. [Description not printed as it is same as set forth in Complaint on page 11.] [56]

Parcel No. 9. [Description not printed as it is same as set forth in Complaint on page 11.]

Parcel No. 10. [Description not printed as it is same as set forth in Complaint on page 12.] [57]

Parcel No. 11. [Description not printed as it is same as set forth in Complaint on page 13.] [58]

PARCEL "A"

That portion of the tidelands lying between the U. S. Bulkhead Line and Pierhead Line of San Diego Bay, National City, County of San Diego, California, described as follows:

[Description not printed as it is same as set forth in Amendment to Complaint on page 24.]

Judgment entered Oct. 3, 1944. Docketed Oct. 3, 1944. C. O. Book 9, page 454. Edmund L. Smith, Clerk; by J. M. Horn, Deputy.

[Endorsed]: Filed Oct. 3, 1944. Edmund L. Smith, Clerk. [59]

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[Title of District Court and Cause]

DEMAND FOR TRIAL BY JURY

Comes now Defendant San Francisco Bridge Company, a corporation, and hereby demands a jury trial of the above entitled cause.

H. G. SLOANE

Attorney for Defendant San Francisco  
Bridge Company

[Endorsed]: Filed Nov. 30, 1944. Edmund L. Smith, Clerk. [60]

[Title of District Court and Cause]

## AMENDED DECLARATION OF TAKING

To the Honorable

The United States District Court:

Whereas heretofore a Declaration of Taking was filed in the above-entitled proceedings with respect to a portion of the hereinafter described land; and

Whereas it is desired to amend said Declaration for the purpose of taking title to the whole of the property involved in the above-entitled proceedings; and

Whereas the United States Maritime Commission has made a determination as to the estimated just compensation for the property hereinafter described and is therefore prepared to have title thereto vest absolutely and in fee simple in the United States of America upon the filing of this amended Declaration in said proceedings.

Now, Therefore, the United States of America and the United States Maritime Commission acting by and through E. S. Land, Chairman of the [61] United States Maritime Commission under and by virtue of the provisions of Title II of the Second War Powers Act, 1942; Public Law No. 247, 77th Congress approved August 25, 1941; the Act of Congress known and described as Public Law No. 474, 77th Congress, approved March 5, 1942; the Merchant Marine Act, 1936, as amended, and the Act of Congress approved February 26, 1931 (46 Stat. 1421) do hereby make and cause to be filed this Declaration of Taking pursuant to said Acts of Congress and by virtue and authority thereof do declare that the land



described in Schedule "A", attached hereto and made a part hereof, and which is the same land described in the amended petition filed in this proceedings, and the fee simple title thereto are hereby taken under the authority of said Acts of Congress, and that the public use for which said land is taken is for the construction of facilities to be used in the construction and repair of ships and the operation of such facilities, and the estate hereby taken in said land for the public use aforesaid is in fee simple absolute, excepting, however, all of the right, title and interest of the United States of America, or its agent, Defense Plant Corporation, in and to said real estate, including all improvements and fixtures located thereon or in any way appertaining thereto, which have heretofore vested in the United States or its agent, Defense Plant Corporation by virtue of the following instruments; agreement dated December 27, 1941, between the Defense Plant Corporation and the Tavares Construction Company, Inc. (Exhibit 1); agreement dated November 27, 1941, between the United States Maritime Commission and the Tavares Construction Company, Inc. (Exhibit 2); lease agreement dated January 1, 1942, between the City of National City and the Tavares Construction Company, Inc. and assignment thereof to the Defense Plant Corporation, dated January 30, 1942, (Exhibit 3); agreement dated October 26, 1943, between the United States Maritime Commission and the Tavares Construction Company, Inc. (Exhibit 4); agreement dated June 30, 1942, between the United States Maritime Commission and the Tavares Construction Company, Inc. (Exhibit 5); agreement dated November 30, 1943, between the United States Maritime Commission and the Tavares Construction Company, Inc. (Exhibit 6), copies of which are attached

hereto as exhibits [62] and incorporated by reference herein.

The United States Maritime Commission hereby states that the sum of money estimated by it as just compensation for the land and improvements thereon hereby taken is \$171,650. Said estimated just compensation is allocated as set forth in Schedule "B", attached hereto and hereby made a part hereof. The United States Maritime Commission hereby deposits in the registry of this Honorable Court for the use of the persons entitled thereto, the amount of estimated compensation set forth in said Schedule "B", and is of the opinion that the ultimate award of damages for the taking of said property will be within the limits prescribed by Congress to be paid as a price therefor.

In Witness Whereof, the petitioner, United States of America has caused this Declaration to be signed in the name of the United States Maritime Commission, the authority empowered by law to acquire the land described in the petition, by its Chairman, E. S. Land, thereunto duly authorized on this 14th day of December, 1944, in the City of Washington, District of Columbia.

UNITED STATES MARITIME COMMISSION

By E. S. Land

Chairman

Attest:

[Illegible]

Assistant Secretary [63]

SCHEDULE "A"

Those Certain Parcels of Land in the City of National City, County of San Diego, State of California, More Particularly Described as Follows:

Parcel 1. [Description not printed as it is same as set forth in Complaint on page 6.]

Parcel 2. [Description not printed as it is same as set forth in Complaint on page 7.]

Parcel 3. [Description not printed as it is same as set forth in Complaint on page 7.] [64]

Parcel 4. [Description not printed as it is same as set forth in Complaint on page 8.] [65]

Parcel 5. [Description not printed as it is same as set forth in Complaint on page 9.]

Parcel 6. [Description not printed as it is same as set forth in Complaint on page 10.] [66]

Parcel 7. [Description not printed as it is same as set forth in Complaint on page 10.]

Parcel 8. [Description not printed as it is same as set forth in Complaint on page 11.] [67]

Parcel 9. [Description not printed as it is same as set forth in Complaint on page 11.]

Parcel 10. [Description not printed as it is same as set forth in Complaint on page 12.] [68]

Parcel 11. [Description not printed as it is same as set forth in Complaint on page 13.] [69]

## PARCEL "A"

That portion of the tidelands lying between the U. S. Bulkhead Line and Pierhead Line of San Diego Bay, National City, County of San Diego, California, described as follows:

[Description not printed as it is same as set forth in Amendment to Complaint on page 24.] [70]

## SCHEDULE "B"

<u>Parcel Number</u>	<u>Ostensible Owner</u>	<u>Estimated Just Compensation</u>
1, 2, 3, 5, 6, 7, 8 and A	City of National City	\$161,350.
4	Atchison, Topeka & Santa Fe Railway Company	6,000.
9	Carl A. Johnson & Pearl Johnson	2,100.
10	Santa Fe Land Improvement Company	1,900.
11	San Diego and Arizona Eastern Railway, Inc. [71]	300.

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## KEY MAP

SHOWING LOCATION OF PARCELS  
PROPOSED SHIPYARD OF

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EXHIBIT 1

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AGREEMENT OF LEASE

PLANCOR-407

This Agreement made and entered into this 27 day of December, 1941, by and between Defense Plant Corporation (hereinafter referred to as "Defense Corporation"), a corporation created by Reconstruction Finance Corporation pursuant to Section 5d of the Reconstruction Finance Corporation Act, as amended, to aid the Government of the United States (hereinafter sometimes called the "Government") in its National Defense Program, and Tavares Construction Company, Inc. (hereinafter called "Lessee"), a corporation organized and doing business under the laws of the State of California;

Witnesseth:

Whereas, the Maritime Commission has advised that the construction of concrete barges and the expansion of facilities within the United States for such construction are essential to the National Defense Program; and

Whereas, the Maritime Commission has advised that for such construction the establishment of additional facilities (such facilities including building slips, tracks, outfitting docks, buildings, and other structures and improvements, being hereinafter sometimes called the "Facilities"), at National City, California, and the acquisition of additional machinery and equipment for use in connection with said Facilities and Lessee's existing facilities (such machinery and equipment, including cranes and other types of movable equipment, but exclusive of items commonly classified as expendable items, being hereinafter

sometimes called the "Machinery"), are in its opinion necessary in the interest of national defense; and

Whereas, Lessee has leased or proposes to lease a site at National City, California, consisting of approximately six (6) acres of land suitable for the location of such additional Facilities (hereinafter called the "Site"); and

Whereas, Lessee has entered into a contract or contracts with the Government for the construction of concrete barges; and the establishment of the additional Facilities above referred to and the acquisition of the Machinery to be provided hereunder are essential to enable Lessee to construct such barges and to expedite completion of such work in accordance with any such contracts; and

Whereas, Lessee represents that, in the price charged the Government for the construction of such barges, there have been eliminated all charges (including amortization and depreciation) for the Site, additional Facilities and Machinery to [74] be provided hereunder, exclusive of the rent, maintenance, taxes and insurance provided for herein;

Now, Therefore, in consideration of the mutual covenants herein contained, it is agreed by and between the parties hereto as follows:

One: Lessee agrees forthwith upon the execution of this agreement to assign or cause to be assigned to Defense Corporation all of its right, title and interest in and to the lease covering the Site with all appurtenant and necessary rights thereto (including all rights which it may have by reason of said lease from National City, California) and Defense Corporation agrees to purchase Lessee's interest in said lease with such rights; provided

the terms thereof and the price thereof shall be satisfactory to Defense Corporation.

Two: Lessee agrees forthwith and from time to time to prepare, or cause to be prepared, and to submit to Defense Corporation and to the Maritime Commission for their approval such plans, designs, specifications, and schedules for the dredging, erection and construction of the Facilities and the acquisition and installation of the Machinery (which shall indicate the estimated cost thereof, stating as to the machinery the estimated price of each item), as they may require, and Lessee agrees, upon approval of such plans, designs, specifications, and schedules by Defense Corporation and the Maritime Commission, to proceed in accordance therewith and complete as soon as practicable the dredging, erection, and construction of the Facilities (hereinafter called the "Construction Program") and the acquisition and installation of the Machinery (hereinafter called the "Acquisition Program"). With the approval of Defense Corporation, Lessee shall have the right to make any alteration in the plans, designs, specifications, and schedules approved pursuant to this paragraph Two, provided, that if such alteration will result in substantial delay in effecting, or a material alteration in the character of, the Programs, or will increase the aggregate cost of said Programs beyond the aggregate amount of such estimates, Lessee shall likewise obtain from the Maritime Commission its approval of such alteration.

Three: In carrying out the work to be performed by it under the Construction Program Lessee may employ such contractors and enter into such contracts with them as it may deem advisable, with the written approval of a designated representative of Defense Corporation.



Four: Defense Corporation shall pay all costs of the Construction Program, from time to time as the work progresses, upon requisition of Lessee approved by Defense Corporation. A representative of Defense Corporation authorized to [75] approve such requisitions on its behalf shall be stationed at the site of construction during such times as Lessee may require.

Five: Lessee shall from time to time advise Defense Corporation, in writing, of the items of Machinery which Lessee shall propose to purchase for the purpose of the Acquisition Program and the estimated cost thereof, and shall forthwith proceed to purchase the same in the name and on behalf of Defense Corporation, provided, however, that no such items shall be purchased or installed if Defense Corporation shall object thereto within three (3) days of the receipt of such written advice. Defense Corporation shall, from time to time, furnish to Lessee such evidence as Lessee may request with reference to its authority to make such purchases on behalf of Defense Corporation.

Six: Lessee shall furnish to Defense Corporation and to the Maritime Commission a description of the Facilities and each item of Machinery so constructed and purchased so as to be capable of identification, and, to the extent practicable, the Facilities and each item of Machinery shall be marked or stamped by Lessee in a way satisfactory to Defense Corporation so as to indicate Defense Corporation's ownership therein.

Seven: All bills of the vendors for Machinery purchased by Lessee for the account of Defense Corporation pursuant to the provisions hereof shall be promptly submitted by Lessee to Defense Corporation accompanied



by a certificate of Lessee, executed by one of its officers duly designated for that purpose, to the effect that the items covered by such bills are included in and necessary in connection with the Acquisition Program, that the prices thereof are in its opinion fair and reasonable, and that such bills are proper for payment. Such bills, and other costs of the Acquisition Program when approved by Defense Corporation, shall be promptly paid by Defense Corporation.

Eight: In the execution of the Programs Lessee agrees to comply with, and give all stipulations and representations required by, applicable federal laws and further agrees to require such compliances, representations, and stipulations with respect to any contract entered into by it with others under such Progress as may be required by applicable federal law; and notwithstanding the generality of the foregoing, Lessee agrees further that in the performance of this agreement it will not discriminate against any worker because of race, creed, color or national origin.

Nine: No salaries of Lessee's executive officers, no fees of its attorneys, no part of the expense incurred in conducting Lessee's offices and no overhead expenses of any kind shall be included in the cost of leasing the Site or of the Programs, except that direct expenses of Lessee's officers or employees and fees of [76] attorneys retained or employed by Lessee in connection with the Program may be so included to the extent approved by Defense Corporation.

Ten: Notwithstanding any other provision herein contained, the maximum amount which Defense Corporation shall be required to expend hereunder shall not

exceed Four Hundred Four Thousand Five Hundred Dollars (\$404,500).

Eleven: Title to the Facilities and Machinery (including Lessee's interest in said lease from National City, California) to be acquired hereunder shall unless and until the same shall be transferred by Defense Corporation in accordance with the provisions hereof, be vested in Defense Corporation, and such Machinery and other removable Facilities shall remain personalty notwithstanding the fact that they may be affixed or attached to realty.

Twelve: Subject to termination upon the terms hereinafter in this paragraph Twelve provided, Defense Corporation hereby agrees to sublease the Site and to lease the Facilities and Machinery to be acquired hereunder, and does hereby sublease the Site, and leases the Facilities and Machinery to be acquired hereunder, to Lessee and Lessee does hereby lease and sublease the same from Defense Corporation for a term ending December 31, 1947, which term, upon its expiration, shall be automatically extended, subject to similar termination for an additional period ending December 31, 1949. Defense Corporation and Lessee each agrees, upon the written request of the other, to execute and deliver such additional instruments of lease as may be necessary to carry out the provisions of this agreement.

This lease or any extension thereof under this paragraph Twelve may be terminated by the parties hereto in the manner hereinafter set forth. At any time when substantial use by Lessee of the Site, Facilities, and Machinery shall be no longer required to enable Lessee to construct boats for the Government, Defense Corporation

may, with the written approval of the Maritime Commission, give written notice to Lessee that such substantial use is no longer required and that Defense Corporation therefore proposes the termination of the lease or extension thereof, and Lessee may give similar written notice to Defense Corporation and to the Maritime Commission stating that Lessee therefore proposes the termination of this lease or extension thereof. The lease, or extension thereof, shall terminate ten (10) days after receipt by Lessee of the notice from Defense Corporation above provided or after receipt by Defense Corporation and the Maritime Commission of the notice from Lessee above provided for, unless within that time Lessee or the Maritime Commission, as the case may be, shall require by notice in writing or by telegraph to the other and to Defense Corporation that the facts necessary to termination, as hereinabove provided, [77] be submitted for determination by arbitrators, in which event the arbitrator to be appointed by the party giving the notice of arbitration shall be named in the notice, the arbitrator to be appointed by the other party to the arbitration (Lessee or the Maritime Commission, as the case may be) shall be named within five (5) days of receipt of such notice of arbitration, and an additional arbitrator shall, within five (5) days of the appointment of the second arbitrator, be selected by the two (2) arbitrators theretofore appointed, but if one of said parties shall have failed to appoint an arbitrator, the sole arbitrator shall arbitrate the question alone. If two (2) arbitrators shall have been appointed by the respective parties to the arbitration and shall have failed to select an additional arbitrator within the above stated time, the additional arbitrator shall be appointed by the Senior Judge of the Circuit

Court of Appeals for the Ninth Circuit, upon application therefor by either of said parties to the arbitration. The decision of a majority of the arbitrators so appointed, or if either party shall have failed to appoint its arbitrator, the decision of the sole arbitrator, shall be final and binding upon the Lessee, the Maritime Commission, and Defense Corporation for all purposes. The cost of arbitration, except the cost of the arbitrator appointed by the Maritime Commission, shall be paid by Lessee. The arbitrators, or the sole arbitrator, as the case may be, shall give prompt notice in writing of the decision to the Maritime Commission, to Lessee and to Defense Corporation, and if the decision establishes that the facts necessary to termination exists, this lease, or extension thereof, shall terminate on the fifth day after the giving of notice of the decision.

Thirteen: In consideration of the covenants herein contained and as rental for the Site, Facilities and Machinery (in addition to the rental for the Site which Lessee leased from National City, California, all of which Lessee agrees to pay during the term of the lease). Lessee agrees to pay to Defense Corporation Eighty-three Thousand Three Hundred Twenty-seven Dollars (\$83,327) for each boat delivered to the Government under or pursuant to its contract for the construction of five (5) concrete barges or any other contract with the Government for the construction of boats, said rent to be paid as each boat is delivered to, and paid for by the Government. When the total amount of rental which Lessee shall be required to pay hereunder shall equal the amount expended by Defense Corporation under this agreement plus interest on each expenditure (such expenditures to include all direct expenses, without over-



head, incurred by Defense Corporation in connection with the Facilities and Machinery or in connection with this agreement) from the date thereof at the rate of four per cent (4%) per annum less an amount equal to interest [78] at four per cent (4%) on each rental payment from the date of payment thereof, Lessee shall not be required to pay any further rental.

Fourteen: Defense Corporation, by notice in writing with the approval of the Maritime Commission noted thereon, may, in addition to all other rights with reference to termination under paragraph Twelve hereof, canceled this lease or extension thereof, in the event (a) all or substantially all of Lessee's contracts with the Government, at any time outstanding, for the construction of concrete barges and other boats shall be terminated or canceled prior to completion, or (b) the Government shall request priority for itself or others with respect to the use of the facilities to be provided hereunder, and Lessee shall fail or refuse to give such priority, or (c) a receiver or trustee is appointed for Lessee or its property, or Lessee makes an assignment for the benefit of creditors, or Lessee become insolvent, or a petition is filed by or against Lessee pursuant to any of the provisions of the United States Bankruptcy Act, as amended, for the purpose of adjudicating Lessee a bankrupt, or for the reorganization of Lessee, or for the purpose of effecting a composition or rearrangement with Lessee's creditors, and any such petition filed against Lessee is not dismissed within sixty (60) days, or (d) of any violation of any of the terms, conditions or covenants of this lease or extension thereof by Lessee and the failure of Lessee to cure such violation within thirty (30) days from the giving of written notice thereof by Defense Corporation

to Lessee. Upon the expiration, termination, or cancellation of this lease or extension thereof, Defense Corporation shall have the right to invoke any remedy permitted by law or in equity for the protection of its interest hereunder, and Lessee hereby expressly waives all rights which it may have to redeem or to be served with any further notice of Defense Corporation's intention to cancel or terminate this lease or extension thereof other than as herein provided.

Fifteen: Upon the expiration or termination of this lease or extension thereof pursuant to paragraph Twelve hereof, or upon cancellation of this lease or extension thereof pursuant to clause (a) of paragraph Fourteen hereof (unless such cancellation shall have been effected because of a violation by Lessee of the contracts referred to in said clause (a)), Lessee shall have and is hereby granted, for a period of ninety (90) days after such termination, expiration, or cancellation (hereinafter referred to as the "Option Period") the right and option, by written notice [79] to Defense Corporation and to the Maritime Commission, to purchase all but not part of the Site, Facilities and Machinery at the following prices:

- (a) At the actual cost to Defense Corporation of the Facilities, Machinery and Defense Corporation's interest in the Site (including all direct expenses, without overhead, incurred by Defense Corporation in connection therewith or in connection with this agreement), plus interest thereon at the rate of four per cent (4%) per annum (such interest to be calculated on each item of disbursement made by Defense Corporation from the date thereof), less the amount of any rentals theretofore paid by



Lessee to Defense Corporation pursuant to the provisions of paragraph Thirteen hereof, together with interest on each such rental payment from the date thereof at the rate of four per cent (4%) per annum; or

- (b) At the actual cost to Defense Corporation of the Facilities, Machinery and Defense Corporation's interest in the Site (including all direct expenses, without overhead, incurred by Defense Corporation in connection therewith or in connection with this agreement), less an amount representing depreciation, obsolescence and loss of value due to use for national defense purposes for each year or fractional part thereof at the following rates for the following classifications of equipment, which classifications shall be determined in connection with the various items as the construction and acquisition of the items comprising the Programs proceed:

1. Buildings, Ways, Docks, Structures, Improvements (fencing, paving, spur tracks, etc.) and Building Installations other than mechanical 5%
2. Installations (mechanical), Movable Equipment, Cranes, Tools, Machinery, Shop Fixtures, Laboratory and Test Equipment, Furniture and Fixtures, Loading and Lifting Trucks, etc. 10%
3. Portable Durable Tools and Automotive Equipment 25%

provided, however, that the minimum residual value on all items shall be 15%; whichever is the higher.

During the Option Period Lessee shall have the right to negotiate with Defense Corporation and the Maritime Commission for the purchase or lease of the Facilities and Machinery, or any portion thereof, and, upon the establishment by the Lessee, Defense Corporation, and the Maritime Commission of mutually satisfactory terms and conditions, Defense Corporation will sell or lease, as the case may be, the property covered thereby to Lessee. Defense Corporation further agrees, to the extent that it lawfully may, that it will not sell the Facilities and Machinery, or any part thereof, to any party or parties other than another branch of the Government (in which event such sale shall be in all respects subject to paragraph Twenty-six hereof) for a period of ninety (90) days following the expiration of the full Option Period unless it shall first have offered the same for sale to Lessee at a price equal to the best offer received by Defense Corporation and Lessee shall have failed or refused to purchase the same within thirty (30) days after the receipt of such offer. In the event of any sale to Lessee pursuant to the provisions of this paragraph, transfer of title shall be made without any representations or warranties whatsoever on the part of Defense Corporation. [80]

Sixteen: So long as this lease remains in full force and effect Lessee shall procure and maintain at its cost insurance on the Facilities and on the Machinery to be acquired hereunder against fire, windstorm, and such other hazards, in such companies, and in such amounts as shall be satisfactory to, or required by, Defense Corporation. The policies evidencing such insurance shall be made payable to, and delivered to, Defense Corporation. In the event of loss under any of the policies, the pro-

ceeds may, upon the written request of Lessee promptly made, be used by Lessee for the repair, restoration, or replacement of the property damaged or destroyed, and to that end Defense Corporation shall promptly make available to Lessee the insurance proceeds received by Defense Corporation. Any property so acquired in replacement shall be the property of Defense Corporation and so identified and shall be subject to all the terms and provisions of this agreement.

Seventeen: Lessee agrees to save Defense Corporation harmless against any liability whatsoever because of accidents or injury to persons or property occurring in the operation of the Facilities or the use of the Machinery by Lessee. Lessee also agrees that during the term of this lease, or any extension thereof, it will procure and maintain at its cost public liability insurance and property damage insurance in such amounts and with such companies as Defense Corporation shall approve or require. The policies evidencing such insurance shall name Defense Corporation as an assured and shall be delivered to Defense Corporation.

Eighteen: Lessee shall use reasonable care in the use and operation of the Site, Facilities and Machinery to be provided hereunder and shall keep the same in good state of repair (ordinary wear and tear, damage or destruction due to causes beyond Lessee's control and without Lessee's negligence, excepted), and upon the expiration, termination, or cancellation of this lease, or extension thereof, and upon expiration of the Option Period, if any, Lessee shall forthwith yield, and place Defense Corporation in peaceful possession of the Site, Facilities and of all the Machinery to be provided hereunder free and clear of any liens and claims other than those result-

ing from claims against Defense Corporation; and if any of the Machinery shall be then located elsewhere than on the Site or Facilities to be provided hereunder, Defense Corporation shall, in addition, have the right to remove, and upon the written request of Lessee, shall promptly remove, at its own expense, the Facilities and Machinery located on the Site, and if such removal shall not take place within sixty (60) days after such request, Lessee may remove the Facilities and Machinery and place the same in storage for the account and at the expense of Defense Corporation, and Defense Corporation shall have corresponding rights and Lessee shall have corresponding rights [81] and obligations with respect to removal and storage of such Facilities and Machinery owned by the Lessee and located on the Site covered by this agreement.

Nineteen: Lessee may, with the consent of Defense Corporation and the Maritime Commission, use such items of Machinery as it may designate in writing to Defense Corporation and the Maritime Commission, in connection with the construction of boats in any other shipyards of Lessee

Twenty: Lessee agrees to pay to the proper authority, when and as the same become due and payable, all taxes, assessments and similar charges which at any time during the term of this lease or any extension thereof may be taxed, assessed or imposed upon Defense Corporation or Lessee with respect to or upon the Site, the Facilities, or the Machinery, or any part thereof, or upon the occupier thereof, or upon the use of the Site, Facilities or Machinery. Lessee also agrees to pay all claims or charges for or on account of water, light, heat, power, and any other service or utility furnished to or

with respect to the Site, the Facilities or the Machinery, or any part thereof.

Twenty-one: In carrying out the Programs and in the operation of the Facilities and any of the Machinery to be acquired hereunder Lessee agrees to comply with all applicable state, municipal and local laws and the rules, orders, regulations and requirements of any departments and bureaus and all local ordinances and regulations, and further agrees to indemnify and hold Defense Corporation harmless from any liability or penalty which may be imposed by local or state authority or any department or bureau thereof, by reason of any asserted violation by Lessee of such laws, rules, orders, ordinances, or regulations.

Twenty-two: Lessee may use such Site, Facilities, and Machinery only for the construction by Lessee of boats for sale to the Government, unless otherwise permitted, in writing, by Defendant Corporation with the consent of the Maritime Commission noted thereon. Lessee also agrees that so long as this lease or extension thereof remains in effect it will eliminate all charges (including all charges for amortization and depreciation), exclusive of the rental, maintenance, taxes and insurance provided for herein and ordinary operating expenses, for the Site, Facilities and the Machinery to be provided hereunder, from any price charged the Government.

Twenty-three: So long as this lease, or any extension thereof, remains in effect, Lessee shall maintain a method of separate accounting of all operations performed, and of all work done in connection with the construction of boats or otherwise by Lessee through the use of the Facilities herein provided, and agrees to make available



to Defense Corporation and the Maritime Commission, for audit and inspection, its records pertaining to the Programs and the operation of the Facilities [82] and any of the Machinery, the number of boats constructed and/or other operations performed by Lessee as above stated, and the payments therefor. Defense Corporation and the Maritime Commission shall have the right to inspect the Site, Facilities, and Machinery to be provided hereunder at all reasonable times during the continuance of this lease or extension thereof.

Twenty-four: Lessee will not without prior written consent of Defense Corporation and the approval of the Maritime Commission sell, assign, or pledge this lease or any of its rights or obligations hereunder, or sublease or permit the use by others of any of the property covered by this lease.

Twenty-five: The failure of Defense Corporation to insist, in any one or more instances, upon performance of any of the terms, covenants, or conditions of this agreement shall not be construed as a waiver or a relinquishment of the future performance of any such term, covenant, or condition, but Lessee's obligation with respect to such future performance shall continue in full force and effect.

Twenty-six: It is contemplated that the lease of the Site, Facilities, and Machinery to be provided hereunder may be transferred and conveyed to another branch of the Government and, upon such transfer, the Government, acting through the Maritime Commission, shall succeed to all the rights, powers, privileges, discretion,



and obligations of Defense Corporation hereunder, retaining, however, all discretion and power of approval herein vested in the Maritime Commission. In the event of such transfer, Defense Corporation shall cease to have any rights, duties, or obligations hereunder and all powers in Defense Corporation to give any notices, consents, or approvals or to raise any objections, and the right of Defense Corporation to receive any notices provided for herein shall terminate and thereafter shall be vested in the Maritime Commission.

Twenty-seven: No member of or Delegate to the Congress of the United States of America shall be admitted to any share or part of this agreement or to any benefit arising therefrom.

Twenty-eight: It is understood and agreed that whenever provision is made herein for the designation by Defense Corporation of a representative or representatives, or reference is made to such representatives of Defense Corporation, Defense Corporation may designate as any one or more of such representatives, a representative or representatives of the Maritime Commission.

Twenty-nine: Whenever used herein, the term "Maritime Commission" shall mean the United States Maritime Commission. [83]

Thirty: Any notice required to be given to the Maritime Commission under the provisions of this agreement shall be addressed in writing to the Secretary of the United States Maritime Commission, Commerce Building, Washington, D. C.

In Witness Whereof, the parties hereto have caused their corporate seals to be hereunto affixed, and these presents to be signed by their duly authorized officers the day and year first above written.

DEFENSE PLANT CORPORATION

By (Signed) John W. Snyder  
Executive Vice President

(Seal)

Attest: (Signed) A. T. Hobson  
Secretary

Signed and sealed in the presence of:

(Signed) Barbara P. Teagle

(Signed) Mary Jean Ott

TAVARES CONSTRUCTION COMPANY, INC.

By (Signed) Carlos Tavares  
President

(Seal)

Attest: (Signed) Don F. Gates  
Secretary

Signed and sealed in the presence of:

(Signed) Henry M. Page

(Signed) Frank A. Witt

District of Columbia: ss.

On this 7th day of January, 1942, before me appeared John W. Snyder, to me personally known, who, being by me duly sworn did say that he is the Executive Vice President of Defense Plant Corporation; that the seal affixed to the foregoing instrument is the corporate seal of said Corporation; that said instrument was signed

and sealed in behalf of said Corporation by authority of its board of directors; and said John W. Snyder acknowledged said instrument to be the free act and deed of said Corporation.

In Witness Whereof, I have hereunto affixed my official signature with the seal of my office the day and year above written.

(Seal) (Signed) Thomas S. Kelly, 3rd  
Notary Public, District of Columbia

My commission expires September 1, 1946

State of California  
County of Los Angeles—ss.

On this 28 day of December, 1941, before me appeared Carlos Tavares, to me personally known, who, being by me duly sworn did say that he is the President of Tavares Construction Company, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said Corporation; that said instrument was signed and sealed in behalf of said Corporation by authority of its board of directors; and said Carlos Tavares acknowledged said instrument to be the free act and deed of said Corporation.

In Witness Whereof, I have hereunto affixed my official signature with the seal of my office the day and year above written.

(Seal) (Signed) Myrtle V. Hitchcock  
Notary Public

My commission expires Apr. 15, 1945 [84]

Tavares  
(Amendatory #1)  
(Plancor 407)

AGREEMENT AMENDING AGREEMENT OF  
LEASE

This Amendatory Agreement, made and entered into this 13th day of April, 1942, by and between Defense Plant Corporation (hereinafter referred to as "Defense Corporation"), a corporation created by Reconstruction Finance Corporation pursuant to Section 5d of the Reconstruction Finance Corporation Act, as amended, to aid the Government of the United States in its National Defense Program and Tavares Construction Company, Inc. (hereinafter called "Lessee"), a corporation organized and doing business under the laws of the State of California;

Witnesseth:

Whereas, an agreement of lease was entered into on the 27th day of December, 1941, by and between Defense Corporation and Lessee covering the lease by Defense Corporation to Lessee of Facilities and Machinery for the purpose of enabling Lessee to increase production and to extend its capacity for the production of concrete barges for the United States Government in connection with the National Defense Program; and

Whereas, said agreement of lease dated December 27, 1941, provided, among other things, that the maximum amount which Defense Corporation would be required to expend thereunder for the acquisition of Facilities and Machinery leased to Lessee as aforesaid, should not ex-

ceed Four Hundred Four Thousand Five Hundred Dollars (\$404,500); and

Whereas, Lessee has advised that due to the necessity of further expanding its capacity for the production of concrete barges, said amount is insufficient and has requested that said maximum amount be increased by One Hundred Ninety-one Thousand Eight Hundred Fifteen Dollars (\$191,815); and

Whereas, the Maritime Commission has advised that the increase as requested by Lessee as aforesaid, has its approval;

Now, Therefore, in consideration of the premises it is agreed by and between the parties hereto that said agreement of lease entered into on December 27, 1941, by and between Defense Corporation and Lessee be and the same hereby is amended in the following particulars:

By striking therefrom paragraph Ten and substituting in lieu and in place of said paragraph Ten the following paragraph Ten: [85]

Ten: Notwithstanding any other provision herein contained, the maximum amount which Defense Corporation shall be required to expend hereunder shall not exceed Five Hundred Ninety-six Thousand Three Hundred Fifteen Dollars (\$596,315).

In Witness Whereof, the parties hereto have caused their corporate seals to be hereunto affixed, and these

presents to be signed by their duly authorized officers the day and year first above written.

DEFENSE PLANT CORPORATION

By (Signed) Sam H. Husbands

President

(Seal)

Attest: (Signed) A. T. Hobson

Secretary

Signed and sealed in the presence of

(Signed) Francis P. Collins

(Signed) Mary Jean Ott

TAVARES CONSTRUCTION COMPANY, INC.

By (Signed) Carlos Tavares

President

(Seal)

Attest: (Signed) Don F. Gates

Secretary

Signed and sealed in the presence of:

(Signed) Gregory D. Smith

(Signed) Grace D. Horton

District of Columbia: ss.

On this 24th day of April, 1942, before me appeared Sam H. Husbands, to me personally known, who, being by me duly sworn did say that he is the President of Defense Plant Corporation; that the seal affixed to the foregoing instrument is the corporate seal of said Corporation; that said instrument was signed and sealed in



behalf of said Corporation by authority of its board of directors; and said Sam H. Husbands acknowledged said instrument to be the free act and deed of said Corporation.

In Witness Whereof, I have hereunto affixed my official signature with the seal of my office the day and year above written.

(Seal) (Signed) Charles J. Buettner  
Notary Public, District of Columbia

My commission expires March 14, 1946

State of California  
County of San Diego—ss.

On this 13th day of April, 1942, before me appeared Carlos Tavares, to me personally known, who, being by me duly sworn did say that he is the President of Tavares Construction Company, Inc., that the seal affixed to the foregoing instrument is the corporate seal of [86] said Corporation; that said instrument was signed and sealed in behalf of said Corporation by authority of its board of directors; and said Carlos Tavares acknowledged said instrument to be the free act and deed of said Corporation.

In Witness Whereof, I have hereunto affixed my official signature with the seal of my office the day and year above written.

(Seal) (Signed) Grace D. Horton  
Notary Public

My commission expires February 5, 1946

Tavares  
(Amendatory #2)  
(Plancor 407)

AGREEMENT AMENDING AGREEMENT OF  
LEASE

This Amendatory Agreement, made and entered into this First day of July, 1942, by and between Defense Plant Corporation (hereinafter referred to as "Defense Corporation"), a corporation created by Reconstruction Finance Corporation pursuant to Section 5d of the Reconstruction Finance Corporation Act, as amended, to aid the Government of the United States in its National Defense Program, and Tavares Construction Company, Inc. (hereinafter called "Lessee"), a corporation organized and doing business under the laws of the State of California;

Witnesseth:

Whereas, an agreement of lease was entered into on the 27th day of December, 1941, by and between Defense Corporation and Lessee covering the lease by Defense Corporation to Lessee of Facilities and Machinery for the purpose of enabling Lessee to increase production and to extend its capacity for the production of concrete barges for the United States Government in connection with the National Defense Program; and

Whereas, said Agreement of Lease was amended by an Agreement Amending Agreement of Lease dated April

13, 1942 amending paragraph Ten thereof by increasing the overall amount to Five Hundred Ninety-six Thousand Three Hundred Fifteen Dollars (\$596,315); and

Whereas, Defense Corporation and Lessee are now desirous of further amending said lease dated December 27, 1941, so as to provide for additional rental for the use of the additional Facilities provided for under said Agreement Amending Agreement of Lease dated April 13, 1942 increasing the maximum amount by One Hundred Ninety-one Thousand Eight Hundred Fifteen Dollars (\$191,815); and

Whereas, the Maritime Commission has advised that the additional rental for said additional Facilities has its approval;

Now, Therefore, in consideration of the premises it is agreed by and between the parties hereto that said agreement of lease entered into on December 27, 1941, by and between Defense Corporation and Lessee, as amended by Agreement Amending Agreement of Lease dated April 13, 1942, be and the same hereby is further amended in the following particulars:

By striking therefrom paragraph Thirteen and substituting in lieu and in place of said paragraph Thirteen the following paragraph Thirteen: [88]

Thirteen: In consideration of the covenants herein contained and as rental for the Site, Facilities and Machinery (in addition to the rental for the Site

which Lessee leased from National City, California, all of which Lessee agrees to pay during the term of the Lease), Lessee agrees to pay to Defense Corporation One Hundred Twenty-two Thousand Eight Hundred Forty Dollars (\$122,840) for each boat delivered to the Government under or pursuant to its contract for the construction of five (5) concrete barges or any other contract with the Government for the construction of boats; said rent to be paid as each boat is delivered to, and paid for by the Government. When the total amount of rental which Lessee shall be required to pay hereunder shall equal the amount expended by Defense Corporation under this agreement plus interest on each expenditure (such expenditures to include all direct expenses, without overhead, incurred by Defense Corporation in connection with the Facilities and Machinery or in connection with this agreement) from the date thereof at the rate of four per cent (4%) per annum less an amount equal to interest at four per cent (4%) on each rental payment from the date of payment thereof, Lessee shall not be required to pay further rental.

In Witness Whereof, the parties hereto have caused their corporate seals to be hereunto affixed, and these presents to be signed by their duly authorized [89] officers the day and year first above written.

DEFENSE PLANT CORPORATION

By (Signed) John W. Snyder  
Executive Vice President  
(Seal)

Attest: (Signed) Leo Nielson  
Assistant Secretary

Signed and sealed in the presence of:

(Signed) Sam B. Newman

(Signed) Mary Jean Ott

TAVARES CONSTRUCTION COMPANY, INC.

By (Signed) Carlos Tavares  
President  
(Seal)

Attest: (Signed) Don F. Gates  
Secretary

Signed and sealed in the presence of:

(Signed) Gregory D. Smith

(Signed) Inez E. Carr

District of Columbia: ss.

On this 13th day of July, 1942, before me appeared John W. Snyder, to me personally known, who, being by me duly sworn did say that he is the Executive Vice President of Defense Plant Corporation; that the seal affixed to the foregoing instrument is the corporate seal of said Corporation; that said instrument was signed and sealed in behalf of said Corporation by authority of its board of directors; and said John W. Snyder acknowl-

edged said instrument to be the free act and deed of said Corporation.

In Witness Whereof, I have hereunto affixed my official signature with the seal of my office the day and year above written.

(Seal)                      (Signed) Thomas S. Kelly, 3rd  
Notary-Public, District of Columbia

My commission expires September 1, 1946

State of California  
County of San Diego—ss.

On this 1 day of July, 1942, before me appeared Carlos Tavares, to me personally known, who, being by me duly sworn did say that he is the President of Tavares Construction Company, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said Corporation; that said instrument was signed and sealed in behalf of said Corporation by authority of its board of directors; and said Carlos Tavares acknowledged said instrument to be the free act and deed of said Corporation.

In Witness Whereof, I have hereunto affixed my official signature with the seal of my office the day and year above written.

(Seal)                      (Signed) Grace D. Horton  
Notary Public

My commission expires Feb. 5, 1946 [90]



Tavares

Amendatory #3

(Plancor 407)

AGREEMENT AMENDING AGREEMENT OF  
LEASE

This Amendatory Agreement, made and entered into this 29th day of July, 1942, by and between Defense Plant Corporation (hereinafter referred to as "Defense Corporation"), a corporation created by Reconstruction Finance Corporation pursuant to Section 5d of the Reconstruction Finance Corporation Act, as amended, to aid the Government of the United States in its National Defense Program, and Tavares Construction Company, Inc. (hereinafter called "Lessee"), a corporation organized and doing business under the laws of the State of California;

Witnesseth:

Whereas, an agreement of lease was entered into on the 27th day of December, 1941, by and between Defense Corporation and Lessee covering the least by Defense Corporation to Lessee of facilities for the purpose of enabling Lessee to increase production and to extend its capacity for the production of concrete barges for the United States Government in connection with the National Defense Program; and

Whereas, said agreement of lease dated December 27th, 1941, as amended, provided, among other things, that the maximum amount which Defense Corporation would be

required to expend thereunder for the acquisition of facilities leased to Lessee as aforesaid, should not exceed Five Hundred Ninety-six Thousand Three Hundred Fifteen Dollars (\$596,315); and

Whereas, Lessee has advised that due to the necessity of further expanding its capacity for the production of concrete barges, said amount is insufficient and has requested that said amount be increased by Ninety-two Thousand One Hundred Nineteen Dollars(\$92,119); and

Whereas, the Maritime Commission has advised the increase as requested by Lessee as aforesaid, has its approval;

Now, therefore, in consideration of the premises it is agreed by and between the parties hereto that said agreement of lease entered into on the 27th day of December, 1941, by and btween Defense Corporation and Lessee be and the same hereby is further amended in the following particulars: [91]

By striking therefrom paragraph Ten and substituting in lieu and in place of said paragraph Ten the following paragraph Ten:

Ten: Notwithstanding any other provisions herein contained, the maximum amount which Defense Corporation shall be required to expend hereunder shall not exceed Six Hundred Eighty-eight Thousand Four Hundred Thirty-four Dollars (\$688,434).

In Witness Whereof, the parties hereto have caused their corporate seals to be hereunto affixed, and these presents to be signed by their duly authorized officers the day and year first above written.

DEFENSE PLANT CORPORATION

By (Signed) Sam H. Husbands

President

(Seal)

Attest: (Signed) Leo Nielson

Assistant Secretary

Signed and sealed in the presence of:

(Signed) Sam B. Newman

(Signed) Grace R. Clark

TAVARES CONSTRUCTION COMPANY, INC.

By (Signed) Carlos Tavares

President

(Seal)

Attest: (Signed) Don F. Gates

Secretary

Signed and sealed in the presence of:

(Signed) Gregory D. Smith

(Signed) Inez E. Carr

District of Columbia: ss.

On this 14th day of August, 1942, before me appeared Sam H. Husbands, to me personally known, who, being by me duly sworn did say that he is the President of Defense Plant Corporation; that the seal affixed to the foregoing instrument is the corporate seal of said Corporation; that said instrument was signed and sealed in

behalf of said Corporation by authority of its board of directors; and said Sam H. Husband acknowledged said instrument to be the free act and deed of said Corporation.

In Witness Whereof, I have hereunto affixed my official signature with the seal of my office the day and year above written.

(Seal)                      (Signed) Thomas S. Kelly, 3rd  
Notary Public, District of Columbia

My commission expires September 1, 1946

State of California  
County of San Diego—ss.

On this 29 day of July, 1942, before me appeared Carlos Tavares, to me personally known, who, being by me duly sworn did say that he is the President of Tavares Construction [92] Company, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said Corporation; that said instrument was signed and sealed in behalf of said Corporation by authority of its board of directors; and said Carlos Tavares acknowledged said instrument to be the free act and deed of said Corporation.

In Witness Whereof, I have hereunto affixed my official signature with the seal of my office the day and year above written.

(Seal)                      (Signed) Grace D. Horton  
Notary Public, San Diego Co., California

My commission expires Feb. 5, 1946 [93]

Tavares

(Amendatory #4)

(Plancor 407)

AGREEMENT AMENDING AGREEMENT OF  
LEASE

This Amendatory Agreement, made and entered into this 12th day of August, 1942, by and between Defense Plant Corporation (hereinafter referred to as "Defense Corporation"), a corporation created by Reconstruction Finance Corporation pursuant to Section 5d of the Reconstruction Finance Corporation Act, as amended, to aid the Government of the United States in its National Defense Program, and Tavares Construction Company, Inc. (hereinafter called "Lessee"), a corporation organized and doing business under the laws of the State of California;

Witnesseth:

Whereas, an agreement of lease was entered into on the 27th day of December, 1941, by and between Defense Corporation and Lessee covering the lease by Defense Corporation to Lessee of Facilities and Machinery for the purpose of enabling Lessee to increase production and to extend its capacity for the production of concrete barges for the United States Government in connection with the National Defense Program; and

Whereas, said agreement of lease, as subsequently amended, provided among other things that the maximum

amount which Defense Corporation would be required to expend thereunder for the acquisition of facilities leased to Lessee as aforesaid, should not exceed Six Hundred Eighty-eight Thousand Four Hundred Thirty-four Dollars (\$688,434); and

Whereas, Lessee has advised that due to the necessity of further expanding its capacity for the production of concrete barges, said amount is insufficient and has requested that said amount be increased by One Million Two Hundred Eighty-seven Thousand Six Hundred Fifty-seven Dollars (\$1,287,657); and

Whereas, Defense Corporation and Lessee are now desirous of further amending said lease dated December 27, 1941, so as to provide for the aforesaid increase and to provide for additional rental for the use of the additional Facilities provided for by said increase; and

Whereas, the Maritime Commission has advised that the increase as requested by Lessee as aforesaid, has its approval;

Now, Therefore, in consideration of the premises it is agreed by and between the parties hereto that said agreement of lease entered into on December [94] 27, 1941, by and between Defense Corporation and Lessee, as subsequently amended, be and the same hereby is further amended in the following particulars:

By striking therefrom paragraphs Ten and Thirteen and substituting in lieu and in place of said



paragraphs Ten and Thirteen the following paragraphs Ten and Thirteen:

Ten: Notwithstanding any other provisions herein contained, the maximum amount which Defense Corporation shall be required to expend hereunder shall not exceed One Million Nine Hundred Seventy-six Thousand Ninety-one Dollars (\$1,976,091).

Thirteen: In consideration of the covenants herein contained, and as rental for the Site, Facilities and Machinery (in addition to the rental for the Site which Lessee leased from National City, California, all of which Lessee agrees to pay during the term of the Lease), Lessee agrees to pay to Defense Corporation One Hundred Forty Thousand Dollars (\$140,000) for each of the first five (5) boats delivered to the Government and Seventy-seven Thousand Two Hundred Sixty Dollars (\$77,260) on each boat thereafter delivered to the Government under or pursuant to its contract for the construction of twenty-two (22) concrete barges or any other contract with the Government for the construction of boats; said rent to be paid as each boat is delivered to, and paid for by the Government.

In Witness Whereof, the parties hereto have caused their corporate seals to be hereunto affixed, and these presents to be signed by their duly authorized [95] officers the day and year first above written.

DEFENSE PLANT CORPORATION

By (Signed) John W. Snyder  
Executive Vice President  
(Seal)

Attest: (Signed) Leo Nielson  
Assistant Secretary

Signed and sealed in the presence of:

(Signed) Jean R. Switzer  
(Signed) Sam B. Newman

TAVARES CONSTRUCTION COMPANY, INC.

By (Signed) Carlos Tavares  
President  
(Seal)

Attest: (Signed) Don F. Gates  
Secretary

Signed and sealed in the presence of:

(Signed) R. S. Seabrook  
(Signed) Lydia McKenzie

District of Columbia: ss.

On this 1st day of Sept., 1942, before me appeared John W. Snyder, to me personally known, who, being by me duly sworn did say that he is the Executive Vice President of Defense Plant Corporation; that the seal affixed to the foregoing instrument is the corporate seal of said Corporation; that said instrument was signed and sealed in behalf of said Corporation by authority of its

board of directors; and said John W. Snyder acknowledged said instrument to be the free act and deed of said Corporation.

In Witness Whereof, I have hereunto affixed my official signature with the seal of my office the day and year above written.

(Seal) (Signed) Thomas S. Kelly, 3rd  
Notary Public, District of Columbia

My commission expires September 1, 1946

State of California  
County of San Diego—ss.

On this 12th day of August, 1942, before me appeared Carlos Tavares, to me personally known, who, being by me duly sworn did say that he is the President of Tavares Construction Company, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said Corporation; that said instrument was signed and sealed in behalf of said Corporation by authority of its board of directors; and said Carlos Tavares acknowledged said instrument to be the free act and deed of said Corporation.

In Witness Whereof, I have hereunto affixed my official signature with the seal of my office the day and year above written.

(Seal) (Signed) Grace D. Horton  
Notary Public, San Diego Co., Cal.

My commission expires Feb. 5, 1946 [96]

Tavares  
(Amendatory #5)  
Plancor 407

## AGREEMENT AMENDING AGREEMENT OF LEASE

This Amendatory Agreement, made and entered into this 11 day of November, 1942, by and between Defense Plant Corporation (hereinafter referred to as "Defense Corporation"), a corporation created by Reconstruction Finance Corporation pursuant to Section 5d of the Reconstruction Finance Corporation Act, as amended, to aid the Government of the United States in its National Defense Program, and Tavares Construction Company, Inc. (hereinafter called "Lessee"), a corporation organized and doing business under the laws of the State of California;

Witnesseth:

Whereas, an Agreement of Lease was entered into on the 27th day of December, 1941, by and between Defense Corporation and Lessee covering the lease by Defense Corporation to Lessee of a Site, Facilities and Machinery for the purpose of enabling Lessee to increase production and to extend its capacity for the production of concrete barges for the United States Government in connection with the National Defense Program; and

Whereas, said Agreement of Lease was amended by agreements dated April 13, 1942, July 1, 1942, July 29, 1942 and August 12, 1942; and

Whereas, said Agreement of Lease, as amended, provided, among other things, that the maximum amount

which Defense Corporation would be required to expend thereunder should not exceed One Million Nine Hundred Seventy-six Thousand Ninety-one Dollars (\$1,976,091); and

Whereas, Lessee has advised that due to the necessity of removing existing facilities from land which has been taken by the Government for other purposes and the necessity of acquiring additional facilities, said amount is insufficient and Lessee accordingly has requested that said amount be increased by Two Hundred Eighty-four Thousand Five Hundred Forty-nine Dollars (\$284,549); and

Whereas, the Maritime Commission has advised that the increase requested by Lessee has its approval; and

Whereas, the Government is proceeding to acquire title to additional land to be used as a part of the Site for the facilities which are to be removed from or which were to have been placed upon the aforesaid land taken by the Government for other purposes (such land and the balance of the land heretofore constituting the Site being hereinafter referred to as "the Site"); and [97]

Whereas, upon acquisition of title to such additional land by the Government the Maritime Commission has indicated that it will cause the same to be conveyed to Defense Corporation upon receipt of payment of the cost thereof;

Now, Therefore, in consideration of the premises it is agreed by and between the parties hereto that said Agree-

ment of Lease entered into on December 27, 1941, by and between Defense Corporation and Lessee, as amended, be and the same hereby is further amended in the following particulars:

By striking therefrom paragraphs Ten and Thirteen, and substituting in lieu of said paragraphs the following paragraphs Ten and Thirteen:

Ten: Notwithstanding any other provisions herein contained, the maximum amount which Defense Corporation shall be required to expend hereunder shall not exceed Two Million Two Hundred Sixty Thousand Six Hundred Forty Dollars (\$2,260,640).

Thirteen: In consideration of the covenants herein contained, and as rental for the Site, Facilities and Machinery (in addition to the rental for that part of the Site which Lessee leased from National City, California, which Lessee agrees to pay during the term of the Lease), Lessee agrees to pay to Defense Corporation One Hundred Forty Thousand Dollars (\$140,000) for each of the first five (5) boats delivered to the Government and Ninety-four Thousand Three Hundred Seventy-five Dollars (\$94,375) on each boat thereafter delivered to the Government under or pursuant to its contract for the construction of twenty-two (22) concrete barges or any other contract with the Government for the construction of boats; said rent to be paid as each boat is delivered to, and paid for by the Government.



By adding thereto the following new paragraph  
Thirty-one:

Thirty-one: Lessee agrees that when Defense Corporation shall have acquired title to that part of the Site now being condemned by the Government, the Agreement of Lease, dated December 27, 1941, as amended, shall be further amended so as to provide for an increase in the maximum amount of expenditures to be made by Defense Corporation in the amount of the cost thereof to Defense Corporation (which amount shall not exceed the cost thereof to the Government), and an increase in the [98] amount of rental to be paid by Lessee under said Agreement of Lease, as amended, in an amount sufficient to cover the cost of such part of the Site. Lessee further agrees that in the event the property leased to Lessee under said Agreement of Lease, as amended, should be transferred to another branch of the Government pursuant to paragraph Twent-six thereof prior to the acquisition by Defense Corporation of title to that part of the Site now being condemned by the Government, Lessee will, if it should thereafter elect to exercise the option to purchase conferred by paragraph Fifteen of said Agreement of Lease, as amended, pay to the Government the cost to it of such part of the Site on the same basis as if such cost had been part of the cost to Defense Corporation of the property leased to Lessee under said Agreement of Lease, as amended.

In Witness Whereof, the parties hereto have caused their corporate seals to be hereunto affixed, and these presents to be signed by their duly authorized officers the day and year first above written.

DEFENSE PLANT CORPORATION

By (Signed) John W. Snyder  
Executive Vice President  
(Seal)

Attest: (Signed) Leo Nielson  
Secretary

Signed and sealed in the presence of:

(Signed) Sam B. Newman  
(Signed) Jean R. Switzer

TAVARES CONSTRUCTION COMPANY, INC.

By (Signed) Carlos Tavares  
President  
(Seal)

Attest (Signed) Don F. Gates  
Secretary

Signed and sealed in the presence of:

(Signed) Gregory D. Smith  
(Signed) T. W. Eisenman

District of Columbia: ss.

On this 17 day of November, 1942, before me appeared John W. Snyder, to me personally known, who, being by me duly sworn did say that he is the Executive Vice President of Defense Plant Corporation; that the seal affixed to the foregoing instrument is the corporate seal of said Corporation; that said instrument was signed

and sealed in behalf of said Corporation by authority of its board of directors; and said John W. Snyder acknowledged said instrument to be the free act and deed of said Corporation.

In Witness Whereof, I have hereunto affixed my official signature with the [99] seal of my office the day and year above written.

(Seal) (Signed) Thomas S. Kelly, 3rd  
Notary Public, District of Columbia

My commission expires September 1, 1946

State of California

County of San Diego—ss.

On this 11th day of November, 1942, before me appeared Carlos Tavares, to me personally known, who, being by me duly sworn did say that he is the President of Tavares Construction Company, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said Corporation; that said instrument was signed and sealed in behalf of said Corporation by authority of its board of directors; and said Tavares Construction Co., Inc. acknowledged said instrument to be the free act and deed of said Corporation.

In Witness Whereof, I have hereunto affixed my official signature with the seal of my office the day and year above written.

(Seal) (Signed) Grace D. Horton  
Notary Public, San Diego Co., Cal.

My commission expires Feb. 5, 1946 [100]

Tavares  
(Amendatory #6)  
Pancor 407

## AGREEMENT AMENDING AGREEMENT OF LEASE

This Amendatory Agreement, made and entered into this 9th day of March, 1943, by and between Defense Plant Corporation (hereinafter referred to as "Defense Corporation"), a corporation created by Reconstruction Finance Corporation pursuant to Section 5d of the Reconstruction Finance Corporation Act, as amended, to aid the Government of the United States (hereinafter sometimes called the "Government") in its National Defense Program, and Tavaras Construction Company, Inc. (hereinafter called "Lessee"), a corporation organized and doing business under the laws of the State of California;

Witnesseth:

Whereas, an Agreement of Lease was entered into on the 27th day of December, 1941, by and between Defense Corporation and Lessee covering the lease by Defense Corporation to Lessee of a Site, Facilities and Machinery for the purpose of enabling Lessee to increase production and to extend its capacity for the production of concrete barges for the United States Government in connection with the National Defense Program; and

Whereas, said Agreement of Lease was amended by agreements dated April 13, 1942, July 1, 1942, July 29, 1942, August 12, 1942 and November 11, 1942; and

Whereas, said Agreement of Lease, as amended, provided, among other things, that the maximum amount which Defense Corporation would be required to expend thereunder should not exceed Two Million Two Hundred Sixty Thousand Six Hundred Forty Dollars (\$2,260,640); and

Whereas, Lessee has advised that said amount is insufficient and Lessee accordingly has requested that said amount be increased by Five Hundred Thirty-seven Thousand Four Hundred Twenty-six Dollars (\$537,426); and

Whereas, the Maritime Commission has advised that the increase requested by Lessee has its approval;

Now, Therefore, in consideration of the premises it is agreed by and between the parties hereto that said Agreement of Lease entered into on December 27, 1941, by and between Defense Corporation and Lessee, as amended, be and the same hereby is further amended by striking therefrom paragraphs Ten and Thirteen, and substituting in lieu of said paragraphs the following paragraphs Ten and Thirteen: [101]

Ten: Notwithstanding any other provisions herein contained, the maximum amount which Defense Corporation shall be required to expend hereunder shall not exceed Two Million Seven Hundred Ninety-eight Thousand Sixty-six Dollars (\$2,798,066).



Thirteen: In consideration of the covenants herein contained, and as rental for the Site, Facilities and Machinery (in addition to the rental for that part of the Site which Lessee leased from National City, California, which Lessee agrees to pay during the term of the Lease), Lessee agrees to pay to Defense Corporation One Hundred Forty Thousand Dollars (\$140,000) for each of the first five (5) boats delivered to the Government and One Hundred Twenty-seven Thousand Dollars (\$127,000) on each boat thereafter delivered to the Government under or pursuant to its contract for the construction of twenty-two (22) concrete barges or any other contract with the Government for the construction of boats, said rent to be paid as each boat is delivered to, and paid for by the Government, when the total amount of rental which Lessee shall be required to pay hereunder shall equal the amount expended by Defense Corporation under this agreement (including all direct expenses, without overhead, incurred by Defense Corporation in connection with the Site, Facilities and Machinery or in connection with this agreement) plus interest on each expenditure from the date thereof at the rate of four per cent (4%) per annum less an amount equal to interest at four per cent (4%) on each rental payment from the date of payment thereof, Lessee shall not be required to pay further rental.



In Witness Whereof, the parties hereto have caused their corporate seals to be hereunto affixed, and these presents to be signed by their duly authorized [102] officers the day and year first above written.

DEFENSE PLANT CORPORATION

By (Signed) Frank T. Ronan

Vice President

(Seal)

Attest: (Signed) Leo Nielson

Secretary

Signed and sealed in the presence of:

(Signed) Muriel Krevolin

(Signed) Jean R. Switzer

TAVARES CONSTRUCTION COMPANY, INC.

By (Signed) Carlos Tavares

President

(Seal)

Attest (Signed) Don F. Gates

Secretary

Signed and sealed in the presence of:

(Signed) Gregory D. Smith

(Signed) Inez E. Carr

District of Columbia: ss.

On this 18th day of March, 1943, before me appeared Frank T. Ronan, to me personally known, who, being by me duly sworn did say that he is the Vice President of Defense Plant Corporation, that the seal affixed to the foregoing instrument is the corporate seal of said Cor-

poration, that said instrument was signed and sealed in behalf of said Corporation by authority of its board of directors, and said Frank T. Ronan acknowledged said instrument to be the free act and deed of said Corporation.

In Witness Whereof, I have hereunto affixed my official signature with the seal of my office the day and year above written.

(Seal)                      (Signed) Susan I. Allen  
Notary Public, District of Columbia

My commission expires July 14, 1947

State of California  
County of San Diego—ss.

On this 9th day of March, 1943, before me appeared Carlos Tavares, to me personally known, who, being by me duly sworn did say that he is the President of Tavares Construction Company, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said Corporation; that said instrument was signed and sealed in behalf of said Corporation by authority of its board of directors; and said Carlos Tavares acknowledged said instrument to be the free act and deed of said Corporation.

In Witness Whereof, I have hereunto affixed my official signature with the seal of my office the day and year above written.

(Seal)                      (Signed) Grace D. Horton  
Notary Public, San Diego County, Calif.

My Commission expires Feb. 5, 1946 [103]

EXHIBIT 2

Contract No. MCc-1879.

This Agreement, entered into this 27th day of November, 1941, by and between the United States Maritime Commission (hereinafter called the "Commission") and Tavares Construction Company, Inc., a corporation organized and existing under the laws of the State of California, Lloyd S. Stroud and R. S. Seabrook, individually and as the partnership of Stroud and Seabrook, and C. M. Elliott, said corporation and persons being joint ventures doing business under the name of Concrete Ship Constructors and being hereinafter referred to as the "Contractor":

Whereas:

1. Under the provisions of Public Law 247 (77th Congress) approved August 25, 1941, the Commission is authorized to construct in the United States, merchant vessels of such type, size and speed as it may determine to be useful for carrying on the commerce of the United States and suitable for the conversion into naval or military auxiliaries and to produce and procure parts, equipment, material and supplies for such vessels, without advertising or competitive bidding;

2. The Commission has determined that the vessel hereinafter described is of a type, size and speed which will be useful for carrying on the commerce of the United States and suitable for conversion into naval or military auxiliaries, and desires the contractor to construct said vessel;

3. The aforementioned individuals, partnership and corporation warrant and represent that they are, and each of them is, authorized and has full power to undertake the obligations hereinafter set forth, and that the stockholders and directors of said corporation have taken all action required by law and by its Certificate of Incorporation and by-laws to authorize its officers to execute, acknowledge and deliver this contract; and

4. The Contractor is willing to construct the vessel hereinafter described upon the terms and conditions and for the consideration hereinafter set forth;

Now, Therefore, the parties hereto agree as follows:

Article 1.    General Statement of Work.

(a) The Contractor will furnish all labor, material, supplies and equipment and will perform all work necessary to construct, build and deliver, and will construct, build and deliver at his own risk and expense five concrete barges (herein called the "Vessels") in strict accordance with the plans and specifications referred to in Article 3 hereof, and will do everything required of the Contractor by this contract and the plans and specifications, including the installation of any outfitting or equipment furnished by the Commission, all for the consideration hereinafter stated.

(b) The Vessels shall be constructed at the Contractor's shipyard to be located at National City, California (herein called the "Shipyard") and each Vessel when completed, and after passing the tests prescribed in the specifications in a manner satisfactory to the Commission shall be delivered to the Commission alongside of a safe and accessible pier at or near the Shipyard where there shall

be sufficient water for the Vessels always to be afloat, custom to the contrary notwithstanding, free and clear of all liens and claims of every nature or at such other place as may be mutually agreed upon.

Article 2. Additional Facilities. The Contractor hereby agrees to acquire within the shortest time possible such shipyard facilities at National City, California as are necessary for the performance of the work under this contract, and for such purposes will enter into an agreement satisfactory in form and substance to the Commission with the Defense Plant Corporation for the financing of [104] the cost of such additional facilities. In addition to the payments provided for in Article 15 hereof, the Commission will reimburse the Contractor for any and all rental payments made during the term of this contract to Defense Plant Corporation pursuant to the terms of the aforementioned agreement with such Corporation, but in no event shall the obligation of the Commission to make payments hereunder exceed the sum of \$404,500, plus an amount equal to interest and other charges reimbursable to Defense Plant Corporation under the terms of the aforementioned agreement.

Article 3. Plans and Specifications; Interpretation and Changes.

(a) The drawings or plans, and specifications (herein called the "plans and specifications") designated "United States Maritime Commission Plans and Specifications dated November 13, 1941" for the construction of the Vessels have, at or before the execution of this contract, been identified by the signatures of the parties hereto and are hereby made a part hereof with the same force and effect as though herein set out in full.



(b) If any discrepancy, difference, or conflict exists between the provisions of this agreement and the plans and specifications, then, to the extent of such discrepancy, difference or conflict only, the plans and specifications shall be ineffectual and the provisions hereof shall prevail; but in all other respects the plans and specifications shall be in full force and effect. Any question whether the plans and specifications are in conflict with the provisions of this instrument and any conflict or discrepancy between the plans and specifications themselves shall be brought to the attention of the Commission; in such cases specific directions will be given in writing by the Commission to the Contractor and compliance by the Contractor with such directions shall be obligatory.

(c) The Contractor shall not (except as provided in subsection (b)) depart from the requirements of the plans or specifications without prior written approval of the Commission. The Contractor shall; in making application to the Commission for changes in the plans or specifications, set forth clearly the reasons for the advantages of such changes. The right is reserved, however, by the Commission to make any deductions from, additions to, or further developments of the plans and specifications within the general scope thereof.

Article 4. Contract Price. The contract price of all the Vessels shall be the sum of \$2,494,430 (based on \$498,486 per Vessel) together with such additions and subject to such deductions as are hereinafter provided.



Article 5. Adjustments of Price for Change in Plans and Specifications. Within 10 days (or such longer period as the Commission may allow) after receipt of direction from the Commission to make changes in the plans or specifications of any of the Vessels, or of approval by the Commission of changes requested by the Contractor, the Contractor will furnish to the Commission in writing a statement of its estimate of the net increase or net decrease in cost to result from such change. The Commission (or a Board or Committee designated by it to act in its behalf) shall consider the statement so submitted by the Contractor and on the basis thereof and of such other material as it may deem relevant shall determine and furnish to the Contractor the amount of any such net increase or net decrease in cost. In the event of a net increase, the amount thereof plus 10 per cent shall be added to the contract price. In the event of a net decrease, the amount thereof shall be deducted from the contract price.

Article 6. Adjustments in Contract Price.

(a) The contract price of the Vessels to be constructed and delivered hereunder as stated in Article 4, as adjusted from time to time, is subject to increase or decrease for increased or decreased labor and material cost determined as follows: [105]

1. Labor.

A. The portion of the contract price represented by labor is accepted (for the purposes of this Article only) as \$747,729, divided into labor cost quotas for each month of the construction period as follows:

Months after  
December 1,

<u>1941</u>	<u>% Incr.</u>	<u>Amount</u>
1	2.4	\$ 17,946
2	12.4	92,718
3	15.4	115,150
4	18.1	135,339
5	16.5	123,375
6	13.7	102,439
7	11.0	82,250
8	8.0	59,818
9	2.3	17,198
10	0.2	1,496

B. The Commission will obtain from the United States Department of Labor, Bureau of Statistics, the average hourly earnings in the Durable Goods Group of Manufacturing Industries for the month of October, 1941. The Commission will similarly obtain such average hourly earnings for each subsequent month of the contract period. The Commission shall determine to the nearest 1/10th of 1 per cent the percentage, if any, by which such average hourly earnings for the monthly period are greater or less than the average hourly earnings for the month of October, 1941. The percentage of increase or decrease so determined will be applied to the quota above stated for such monthly period, and the contract price will be correspondingly increased or decreased.

2. Materials.

A. The portion of the contract price represented by material is accepted (for the purposes of this Article only) as \$1,121,594, divided into material cost quotas for each quarterly period of the construction of such Vessels as follows:

<u>Quarters after December 1, 1941</u>	<u>% Incr.</u>	<u>Amount</u>
1st (3 mo.)	37.8	\$423,963
2nd (3 mo.)	53.7	602,296
3rd (3 mo.)	8.4	94,214
4th (1/3 mo.)	0.1	1,121

B. The Commission will obtain from the United States Department of Labor, Bureau of Statistics, the index number of wholesale prices for Group VII, building materials, for the month of October, 1941. The Commission will similarly obtain such index number for each subsequent month of the contract period. The average of the index numbers so obtained for the months included in each quarterly period shall be taken as the index number for such period. The Commission shall determine to the nearest 1/10th of 1 per cent the percentage, if any, by which such average index number for the quarterly period is greater or less than [106] the index number for the month of October, 1941. The percentage of increase or decrease so determined will be applied to the stated quota for the quarterly period, and the contract price will be increased or decreased by the resulting amount.

(b) In the event that during the progress of the work hereunder the Commission shall determine that the quotas set forth above do not adequately reflect the relative percentage of labor and material expenditures made by the Contractor during the quota months or quota periods of the construction of the Vessels, adjustments will be made in such quotas. The quotas of labor and materials will not be altered on account of delays in the completion of the Vessels unless extension in contract time is authorized by the Commission, in which case revised quotas as determined by the Commission will be used.

(c) The Commission reserves the right to substitute for the method of adjustment set forth in paragraph (a) any other method satisfactory to the Contractor should it at any time in the judgment of the Commission appear that the specified methods do not reflect equitably the increase in cost of material and labor under the contract.

(d) The contract price as adjusted under Article 5 and paragraph (a) of this Article shall be subject to further adjustment as follows:

(1) In the event that the amounts which have been properly paid or which are payable to the Contractor under the provisions of paragraph (a) and (c) of Article 15 shall exceed the contract price stated in Article 4 as adjusted under the provisions of Article 5 and paragraph (a) of this Article, the contract price shall be further adjusted so that it shall equal said amounts paid or payable to the Contractor under the provisions of said paragraphs (a) and (c) as determined by audit.

(2) In the event that the contract price stated in Article 4 as adjusted under the provisions of Article

5 and paragraph (a) of this Article shall exceed the amounts which have been properly paid or are then payable to the Contractor under paragraphs (a) and (c) of Article 15, the contract price shall be decreased by such amount as will cause it to equal said amounts paid or payable under said paragraphs (a) and (c) of said Article 15 plus those payable under paragraph (d) of such Article.

Article 7. Delivery Dates. The work under this contract shall be commenced within five days of the date hereof, and each of the Vessels shall be completed in accordance with the following schedule:

<u>Commission's</u> <u>Hull</u> <u>Number</u>	<u>Contractor's</u> <u>Hull</u> <u>Number</u>	<u>Delivery Date</u>
634	1	April 16, 1942
635	2	May 16, 1942
636	3	July 15, 1942
637	4	August 14, 1942
638	5	October 13, 1942 [107]

Article 8. Extension of Time for Completion.

(a) Within 10 days after receipt or direction from the Commission to make changes in the plans and specifications, or approval by the Commission of changes requested by the Contractor, the Contractor will furnish to the Commission in writing a statement of its estimate of the probable resulting change in the time for completion of the work on any Vessel or Vessels affected by such change. The Commission (or a board or committee designated by it to act in its behalf) shall consider the statement so sub-



mitted by the Contractor and on the basis thereof and of such other material as it may deem relevant, shall furnish to the Contractor an estimate of such resulting change, and the date for the completion of the Vessels affected shall be correspondingly changed. If it is later established to the satisfaction of the Contractor and the Commission that the actual change in time resulting from such changes varies from such estimate, the change shall be adjusted.

(b) In case of any delay caused by the Commission or any other agency or instrumentality of the United States, or in case of the occurrence of any cause of delay beyond the reasonable control of the Contractor, including without limitation, non-delivery or late delivery of materials and equipment (but only if the Contractor has ordered such material and equipment at proper times and used every reasonable effort to obtain delivery thereof at the times required), Government priorities, acts of God (other than ordinary storms or inclement weather conditions), earthquakes, lightning, floods or fire, strikes, riots, insurrection or war, or delays of subcontractors due to such enumerated causes, written notice thereof and the anticipated results thereof shall be given promptly by the Contractor to the Commission. Within 20 days after such cause of delay has ceased to exist, the Contractor shall file with the Commission a statement of the actual delay resulting from such cause. The Commission (or a Board or Committee designated by it to act in its behalf) shall determine the duration of such delay, and the time for completion of the Vessel or Vessels, the delivery of which has been delayed thereby, shall be correspondingly extended.

(c) Without prejudice to the Contractor's rights, the determination of any and all claims for change in the



time for completion of any Vessel shall, at the request of either the Commission or the Contractor, be postponed until the completion of such Vessel.

Article 9. Liquidated Damages or Bonuses for Early or Late Completion. In case the Contractor shall fail to complete and deliver any Vessel within the time herein prescribed (as extended under the provisions of the preceding Article) there shall be deducted as liquidated damages from the amount payable to the Contractor under the provisions of paragraph (d) of Article 15 hereof the sum of \$50.00 for each calendar day or part thereof during which the delivery of each Vessel is so delayed. In the event that the Contractor shall, however, complete any Vessel prior to the time prescribed for such completion, there shall be paid as bonus to the Contractor, in addition to the other payments specified in this contract, the sum of \$50.00 for each calendar day elapsing from the date on which the Vessel is actually delivered to the date prescribed for such delivery. The total amount of liquidated damages payable hereunder shall be limited to the amount which would otherwise be payable to the Contractor under the provisions of paragraph (d) of Article 15, and bonus payments shall be subject to the limitations set forth in said paragraph (d).

Article 10. Contractor to Receive and Care for Items Furnished by Commission. The Contractor shall receive, inspect, check as to agreement with bill of lading, store, insure, protect, and install aboard the Vessels prior to delivery, all or any of the items required by the specifications or [108] otherwise to be furnished by the Commission.

Article 11.     Materials and Workmanship—Domestic Preference.     In the performance of the work covered by this contract, the Contractor, subcontractors, material men, or suppliers shall use only such unmanufactured articles, materials, and supplies, as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States; the foregoing provisions shall not apply to such articles, materials, or supplies of the class or kind to be used or such articles, materials, or supplies from which they are manufactured as are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonable available commercial quantities and of a satisfactory quality, or to such articles, materials, or supplies as may be excepted by the head of the Department under the proviso of Title III, Section 3, of the Act of Congress approved March 3, 1933 (41 U. S. C. 10).

Article 12.     Inspection—Approval of Plans.

(a) All material and workmanship shall be subject to inspection, by inspectors of the Commission or such other representatives as the Commission may designate at any and all proper times during manufacture or construction at any and all places where such manufacture or construction is carried on.

(b) The Contractor shall furnish promptly all reasonable facilities and materials including suitable furnished offices with light, heat, telephone, desks, drawing tables, and filing cabinets, necessary for safe and convenient in-

spection and any test that may be required by the inspectors.

(c) Working plans shall be submitted to the Commission in accordance with such procedure as it may prescribe and blueprints of such plans shall be furnished when required by the Commission. The Commission shall promptly pass on all plans and requisitions submitted for action.

(d) The Commission shall promptly pass all work and material conforming to the requirements of this contract, and shall promptly reject all work and material not conforming to the requirements of this contract. Rejected workmanship shall be satisfactorily corrected, and rejected material shall be satisfactorily replaced with proper material, and the Contractor shall promptly segregate and remove the rejected material.

(e) All inspection and tests by the Commission shall be performed in such manner as not to unnecessarily delay the work. The Contractor shall be charged with any additional costs of inspection when material and workmanship are not ready at the time inspection is requested by the Contractor.

(f) Any dispute between the Contractor and any representative of the Commission under this Article, shall be referred promptly to the Commission, and the decision of the Commission thereon shall be final and conclusive.

(g) The provisions of this Article are subject to the provisions of this contract relative to the trials and acceptance of the Vessels.

Article 13. Test and Acceptance. When each barge is completed and after the Commission has made such tests thereon as it may prescribe, such barge, if it meets

with the requirements of the plans and specifications and this contract, will be accepted by the Commission subject to the provisions of Article 14.

Article 14 Guarantee Period. If at any time within 6 months after the acceptance of each Vessel any weakness, deficiency, defect, failure, breaking down or deterioration in such Vessel, including her machinery, appurtenances, [109] and equipment, other than that due to wear and tear, or the negligence or other improper act or omission of the Commission or other operator thereof shall appear, the Contractor will be required to make good, at its expense, any such defects to the satisfaction of the Commission. Any such work required to be done is to be carried out at a port agreeable to the Commission. In computing said period of 6 months from date of acceptance, the time, if any, but only such time, during which the Vessel is not available for service on account of any weakness, deficiency, defect, failure, breaking down or deterioration of the Vessel for which the Contractor is responsible, shall be excluded.

The Contractor shall be informed of all defects and deficiencies discovered during said guarantee period for which it is held responsible, and, whenever practicable, shall be given an opportunity to inspect the same before the defects and deficiencies are remedied, and the decision of the Commission as to the responsibility of the Contractor for such defects and deficiencies shall be final and binding on the parties to this contract.

No payments made under the provisions of this Article shall be included in the cost of the Vessels for the purpose of making payments under the provisions of Article 15 hereof or otherwise, and the total liability of the Con-

tractor under this Article shall be limited to the amount of payments which are payable or have been paid to the Contractor under the provisions of paragraphs (c) and (d) of said Article 15.

Article 15. Payment of Contract Price.

(a) Partial payments on account of the contract price shall be made during the progress of the work hereunder to the Contractor by the Commission at semi-monthly or such other intervals as the parties may mutually agree upon. Such partial payments shall be based upon that portion of the value of the work done and materials on hand which is represented by the cost thereof (inclusive of overhead), and the Contractor shall accompany each voucher for such partial payment with a statement in form satisfactory to the Commission setting forth such cost. Any payment made on the basis of such voucher shall be subject to adjustment upon final audit by the Commission. The Commission may, upon such terms and conditions as it may prescribe, include, as part of the value of work and materials, work performed by any subcontractor or materials, machinery or equipment to be installed in the Vessels, although not yet delivered, if title to such materials, machinery or equipment shall have vested in the Commission.

(b) No payments shall be made except on bills, vouchers, or invoices in such number and form and executed and attested in such manner and supported by such evidence as shall be prescribed by the Commission. All warrants for payments hereunder shall be made payable to the Contractor or order.

(c) Upon launching of each Vessel, there shall be paid to the Contractor, in addition to the payments provided



for in paragraph (a) hereof, the sum of \$6,797.50, and upon delivery thereof the sum of \$6,797.50.

(d) In the event that the payments made under paragraphs (a) and (c) hereof shall, upon completion and delivery of all the Vessels and a final audit under this contract, be found to be less than the contract price stated in Article 4 and adjusted under the provisions of Article 5 and paragraph (a) of Article 6, the Commission shall pay to the Contractor an amount equal to (i) 50 percent of the sum by which the contract price, adjusted as aforesaid, exceeds the amount paid under the provisions of paragraph (a) and (c), less (ii) any liquidated damages payable under Article 9 hereof, plus (iii) any bonuses payable under said Article 9; Provided, that in no event shall the total amount payable under the provisions of this paragraph (including bonuses payable under the provisions of Article 9 hereof) excess the sum of \$158,586. [110]

(e) The payments specified in the preceding paragraphs of this Article shall constitute full consideration to the Contractor for all the work to be performed under the provisions of this contract.

#### Article 16. Determination of Cost.

(a) For the purposes of making payments under Article 15 hereof the term "cost" as therein used shall include all amounts which the Commission determines are chargeable directly to the construction, outfitting and equipping of the Vessels or to constitute items of overhead expense which are not directly chargeable thereto but are incident and necessary for the work of constructing, outfitting and equipping the Vessels. Such cost shall be determined by the Commission in accordance with the applicable provisions of its "Regulations Prescribing the Method for De-



termining Profit, Adopted May 4, 1939," it being understood and agreed that there shall be included in such costs overhead and depreciation on any equipment or plant furnished by the Contractor for use in connection with the work hereunder and the cost of expendable tools and supplies consumed in accordance with and to the extent permitted by the provisions of said Regulations.

(b) In determining cost for the purpose of Article 15 hereof the Commission will exclude therefrom (1) any expense, including (without limitation) traveling expense, deemed by the Commission to be excessive, (2) the cost of remedying work and replacing materials which are defective because of the failure of the Contractor to use reasonable diligence and the cost of performing any work required under the provisions of Article 14 hereof, (3) the exclusions required under paragraph 7.23 of said "Regulations Prescribing the Method of Determining Profit, Adopted May 4, 1939," and (4) costs incurred by the Contractor in contravention of the provisions of this contract including those of Article 17.

(c) All costs shall be scrutinized by the Commission to determine that they are fair, just and not in excess of the market price for the materials and services for which they are incurred.

(d) Statement returns relative to expenditures shall be made as and when directed by the Commission, and all books, files and other records in respect thereto shall at all times be open for inspection by representatives of the Commission.

Article 17. Purchases, Subcontracts and Wage Rates.

(a) Wherever practicable, the Contractor shall obtain from responsible firms and individuals competitive bids for the material, equipment and services required in connection with the performance of the work under this contract and shall award orders therefor to the lowest satisfactory bidder. Where, however, such procedure is not practicable or expedient, contracts may be made and orders awarded upon the basis of market or negotiated prices. No order shall, however, be placed or subcontract made which calls for the performance of services or the delivery of materials, equipment and machinery at a price in excess of \$10,000 per Vessel without the prior approval of the Commission or its authorized representative.

(b) Subject to applicable laws and regulations of any agency of the United States issued pursuant to such laws, the rate of wages paid by the Contractor for work performed under this contract shall not, without the consent of the Commission, be in excess of those established by any stabilization or other conference held under the auspices of the National Defense Advisory Commission or other agency of the United States for the region in which the Shipyard is located, or in the event that rates have not been established for such region, in excess of those which may be approved from time to time by the Commission. [111]

Article 18. Title. The title to all materials, equipment, supplies, and all other property assembled at the Shipyard or elsewhere for the purpose of being used for the construction of the Vessels, as well as title to the Vessels themselves, on account of which payments are made shall immediately be vested in the Commission: Provided, how-

ever, that nothing herein contained shall be construed as a waiver by the Commission of its right to require the Contractor to replace, at Contractor's expense, unsatisfactory workmanship or materials as herein provided: Provided further, that the Contractor shall have an equity in any such material, equipment, supplies, and other property to the extent that it may not have been fully paid for by the Commission.

Article 19. Taxes. The Contractor shall pay all United States, State, County, and City or other taxes, assessments or duties lawfully assessed against the Vessels, materials, supplies or equipment to be used under this contract prior to delivery thereof to the Commission.

Article 20. Liens.

(a) When payment is to be made under this contract, as a condition precedent thereto, the Commission may, in its discretion, require that evidence satisfactory to it, to be furnished by the Contractor showing what, if any, liens or rights in rem of any kind against the Vessels, or their machinery, fittings, or equipment, or the materials on hand for use in the construction thereof, have been or can be acquired for or on account of any work done, or any machinery, fittings, equipment, or material already incorporated as a part of said Vessels, or on hand for that purpose; but it is hereby further stipulated, covenanted, and agreed by the Contractor, for itself and on its own account and for and on account of all persons, firms, associations, and corporations furnishing labor and material for the Vessels, and this contract is upon the express condition that no liens or rights in rem of any kind shall lie or attach upon or against the Vessels or their machinery, fittings, or equipment, or the materials

therefor, or any part thereof, or of either, for or on account of any work done upon or about said Vessels, machinery, fittings, equipment, or materials, or of any materials furnished therefor or in connection therewith, nor for or on account of any other cause, or thing, or of any claims or demands of any kind, except the claims of the Commission.

(b) If a lien or encumbrance arising out of the work to be performed hereunder is filed against the Vessels, or any of them, or against any materials, equipment, supplies or other property intended therefor, the Contractor shall forthwith notify the Commission thereof, and the Commission, subject to the provisions of this Article, may satisfy the same and withhold the amount thereof, together with any expenses incurred in connection therewith from the amount of any payment or payments which may then be due or which may thereafter become due to the Contractor. If the amount of any such payments is insufficient to permit the deduction of the entire cost and expense so incurred by the Commission, the Contractor shall, nevertheless, be liable to the Commission for the deficiency and will pay the same to the Commission on demand. In the event the Commission does not satisfy any such lien or encumbrance, it may, nevertheless, withhold the amount thereof, as provided above, unless and until such lien or encumbrance is satisfied by the Contractor.

(c) If a lien or encumbrance arising out of the work to be performed hereunder is filed against the Vessels, or any of them, or the materials, equipment, supplies, or other property intended therefor, the Contractor shall within 15 days thereafter, cause the Vessel or Vessels, materials, equipment, supplies or other property to be



released and any lien on them or any of them to be discharged; nothing contained herein, however, shall be construed as preventing the Contractor from contesting any such lien or encumbrance or the debt to which it may relate, but in the event of any such contest it shall be the duty of the Contractor within the time named to procure by court order a release of the property from the lien or encumbrance by the filing of a bond, [112] or otherwise, if any such remedy is available under the law; and in the event it is not, the Contractor shall then immediately take such steps as in the opinion of the Commission shall prevent such lien or encumbrance from delaying the work, and shall indemnify and save harmless the Commission from all costs, charges, and damages incurred, or possible of being incurred, by reason of such contest or in any way attributable thereto.

Article 21. Insurance on Vessels and Materials. Until each Vessel has been completed, physically delivered, and accepted by the Commission, such Vessel and all materials, outfitting, equipment, and appliances to be installed in the Vessels including all materials, outfitting, equipment and appliances provided by the Commission for and used or to be used in the construction thereof shall be kept fully insured under Builder's Risk form of policies or other usual forms of insurance including loss or damage caused by strikers, locked out workmen, and/or persons taking part in labor disturbances, and/or riot or civil commotion and/or malicious damage and/or sabotage and/or vandalism and such other forms of insurance as the Commission may require in an amount at no time less than the aggregate of amounts paid or payable to the Contractor by the Commission under this agreement plus the value of any materials, outfitting, equipment, and appliances

furnished by the Commission. The amount of insurance, the terms of the policies, and the insurance companies, underwriters, or underwriting funds shall at all times be satisfactory to the Commission. All policies of insurance shall be taken out in the name of the Contractor for account of Whom It May Concern, and losses under such policies shall be made payable to the Commission for distribution by it to the Commission, or the Contractor as their respective interests may appear. All cover notes and policies, with all premiums or other charges prepaid, shall be delivered to the Commission for its approval and custody. Policies if not in conformance herewith shall be surrendered and cancelled upon direction of the Commission and new policies procured in conformance herewith.

The Contractor may, in its discretion, and shall, if and as required by the Commission, secure fidelity and other similar bonds, workmen's compensation, public liability and automobile liability insurance and such other insurance as may be required by the laws of the state in which the Shipyard is located. The Contractor may also obtain other insurance against liabilities of the Contractor to any third person for any cause whatsoever. All insurance required pursuant to instruction of the Commission shall at all times be maintained with companies, underwriters, or underwriting funds, in amounts and under forms of policies, satisfactory to the Commission.

The Contractor shall not be deemed to have warranted the validity or coverage of any such insurance. In the event that any of the insurance required by the Commission hereunder by reason of any act, omission, or negligence of the Contractor shall not be kept in full force and effect, the Contractor shall pay to the Commission all



losses and indemnify the Commission against all claims and demands which would otherwise have been covered by such insurance.

Article 22. Injury to Employees. The Contractor shall indemnify and save harmless the United States, the Commission, and any other agency or instrumentality of the United States, and the Vessels, against all claims arising from injury to or death of employees, workmen, trespassers, licensees, and all other persons, whether in, on, or about the work to be performed hereunder or from damage to or loss of property, due to the act, neglect or default of the Contractor or subcontractors or their agents or employees; it being expressly understood that the workmen engaged upon the work on the Vessels to be constructed hereunder shall at all times be employees of the Contractor or subcontractors and not of the Commission.

Article 23. Patent Infringement. The Contractor shall be responsible for any and all claims made against the Commission or the Vessels for infringement of patents or patent rights or for the use of patented articles in connection with the work and material furnished by the Contractor, and shall [113] defend, save harmless, and indemnify the United States, the Commission, and every agency or instrumentality of the United States, and the Vessels against all such claims and against all costs, expenses, charges, and damages which the said parties or any of them, may be obliged to pay by reason thereof, including expenses of litigation, if any; provided, however, that upon any such claim being made against said parties or any thereof, the Contractor will be promptly notified of such claim and also of any suit brought in connection

therewith and will be given an opportunity to defend the same; and provided, that no payment on account of any such claim shall be made by the said United States, the Commission, or any other agency or instrumentality of the United States, unless either with the consent of the Contractor or pursuant to the decree of a proper court or tribunal.

Article 24. Covenant to Make Prompt Payment. The Contractor covenants that it will have and maintain at all times, sufficient working funds for the carrying out of its obligations hereunder, and will make prompt payment for all labor, materials, services, and other charges which are to be paid under this contract.

Article 25. Labor Laws.

(a) The Contractor shall not employ any person undergoing sentence of imprisonment at hard labor.

(b) The Contractor will report monthly, and will cause all subcontractors to report in like manner, within 5 days after the close of each calendar month on forms to be furnished by the United States Department of Labor, the number of persons on their respective pay rolls, the aggregate amount of such pay rolls, the man-hours worked, and the total expenditures for materials. He shall furnish to the Department of Labor the names and addresses of all subcontractors on the work at the earliest date practicable: Provided, however, That the requirements of this paragraph shall be applicable only for work at the site of the construction project.

(c) The Contractor and subcontractors at the site of the construction project will comply with the provisions of Public Act No. 324, 73rd Congress, approved June 13, 1934, (48 Stat. 948) and with the provisions of the regu-

lations issued by the Secretary of Labor thereunder, entitled "Regulations Applicable to Contractors and Sub-contractors on Public Building and Public Work and on Building and Work Financed in Whole or in Part by Loans or Grants from the United States," published in the Federal Register March 1, 1941.

(d) This contract is subject to the provisions of the Act of June 25, 1936, (Public No. 814), entitled "An Act to provide more adequate protection to workmen and laborers on projects, buildings, constructions, improvements, and property wherever situated, belonging to the United States of America, by granting to the several States jurisdiction and authority to apply their State workmen's compensation laws on all property and premises belonging to the United States of America."

Article 26. Eight-Hour Law. Until otherwise provided by law, provisions of law prohibiting more than 8 hours of labor in any one day of persons engaged upon work covered by this contract shall, in accordance with the provisions of the Act approved October 10, 1940 (Public No. 831, 76th Cong.), be suspended. The provisions of said Act approved October 10, 1940 are applicable to this contract.

Article 27. Prohibition Against Employment of Certain Persons and Against Discrimination. The Contractor shall not employ any person who advocates, or who is a member of an organization that advocates, the overthrow of the Government of the United States by force or violence to perform any part of the work under this contract, and as a condition to the employment of any person for the performance of such work, the Contractor shall, if the Commission so directs, require such person

to execute and to file an affidavit in such form as to satisfy the requirements of Section 4 of Public Law No. 23 (77th Congress), [114] approved March 27, 1941, but the execution and filing of such affidavit shall be without prejudice to the right of the Commission to require such further evidence in the premises as it may deem desirable. The Contractor agrees that in the performance of the work under this contract, it will not discriminate against any worker because of race, creed, color or national origin. (Executive Order No. 8802, approved June 25, 1941.)

Article 28. Contingent Fees. The Contractor warrants that he has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or fee, contingent or otherwise. Breach of this warranty shall give the Commission the right to terminate the contract, or, in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or fees. This warranty shall not apply to commissions payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

Article 29. Officials not to Benefit. No member of or delegate to Congress, nor Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, except as provided in Section 116 of the Act approved March 4, 1909, (35 Stats. 1109).

Article 30. Events of Default. The following shall constitute events of default under this contract:

(a) Failure of the Contractor in any respect to use due diligence in proceeding with the performance of the work required under this contract, or failure to perform any of the covenants on its part to be performed hereunder, provided that the Commission in either instance shall give notice to the Contractor as to such failure and Contractor shall not within thirty days after being so notified cure such failure.

(b) The filing by the Contractor or any of the undersigned individuals or the undersigned partnership or corporation of a petition in bankruptcy or for reorganization under the Bankruptcy Act or the entry of an order upon petition against the Contractor or any of the said individuals or said partnership or corporation adjudicating such Contractor, individuals, partnership or corporation or any of them a bankrupt, or the appointment of a receiver or receivers of the Contractor, said individuals, partnership or corporation or any of them or of any property belonging to the Contractor, said individuals, partnership or corporation necessary for the performance of its obligations under this agreement.

Article 31. Termination on Account of Default.

(a) Under the occurrence of any of the events of default set forth in Article 30 hereof the Commission may terminate this contract and enter upon the shipyard of the Contractor and take possession thereof as well as of any Vessels either completed or uncompleted and any machinery, materials, fittings, equipment and supplies



theretofore or thereafter delivered at the Shipyard to be incorporated in the construction or the equipment of the Vessels, or to be used in connection therewith, together with all plans, specification, calculations and other records required for the construction or equipment of the Vessels. In the event of termination pursuant to the provisions of this Article, the Commission may complete, or cause to be completed, all of the work to be performed upon the Vessels hereunder, and for such purpose, may take possession of so much of the Shipyard and the Contractor's plant, equipment, tools, machinery and appliances as may be necessary for the proper conduct of such work, and use and occupy the same without payment of rental or any other charge therefor until all of the work to be performed upon the Vessels has been completed. [115]

In the event that this contract is terminated pursuant to the provisions of this Article, the Contractor shall not be entitled to receive any further payments from the Commission on account of the contract price with the exception of payments which have accrued under the provisions of paragraphs (a) and (c) of Article 15 prior to date of termination.

Article 32. Optional Cancellation by the Commission.

(a) At any time prior to the completion of the work to be performed hereunder, the Commission may cancel this contract upon written or telegraphic notice to the Contractor, and upon the effective date of such cancellation the Contractor shall stop all work hereunder except



as otherwise directed by the Commission. In the event of cancellation under this Article, the Commission shall pay to the Contractor the following amounts:

(1) The cost of work performed and materials, equipment and machinery acquired for use in any Vessel whether or not completed and delivered other than costs which have been previously paid under the provisions of paragraph (a) of Article 15 of this contract.

(2) An amount equal to 10 percent of the cost of said work, materials, equipment and machinery or 6 percent of the contract price (as adjusted under the provisions of Article 5 and paragraph (a) of Article 6 to date of cancellation) multiplied by the percentage of the completion of the contract work, whichever amount shall be the lesser, less any payments previously made to the Contractor under the provisions of paragraphs (c) and (d) of Article 15 hereof.

(3) An amount equal to the cancellation fees, approved by the Commission, or charges paid by the Contractor in connection with the cancellation of any subcontract or other agreement for materials, machinery or equipment to be used or services to be performed in connection with the construction of the Vessels if the Commission shall have permitted the cancellation of such subcontracts or other agreements.

(4) Any other expenses of the Contractor in connection with the cancellation of this contract which are determined by the Commission to be necessary and reasonable.

(b) If this contract is cancelled pursuant to the provisions of this Article, the Commission shall permit the Contractor to cancel all subcontracts or other agreements theretofore entered into by the Contractor for the materials, machinery or equipment to be used or services to be performed in connection with the construction of the Vessels except in those cases where the continued performance of such subcontract or other agreements is necessary for the completion of work which the Commission directs the Contractor to perform or where the Commission offers to take over and perform the Contractor's obligations under such subcontracts or other agreements.

Article 33. Loss of or Damage to Vessels. If there shall be an actual loss of any Vessel prior to its delivery to the Commission, or if any Vessel shall be so damaged that in the determination of the Commission work thereon should be abandoned, the Commission may, at its option, either require the Contractor to construct another vessel as a replacement for the Vessel so lost or destroyed or modify this contract so as to relieve the Contractor of its obligation to deliver the Vessel so lost or damaged. In either case, payments made under the provisions of paragraphs (a) and (c) of Article 15 hereof on account of the Vessel so lost or damaged shall be disregarded in determining the amount of payment to which the Contractor is entitled under the provisions of paragraph (d) of said Article 15. In the event that the Commission requires the Contractor to construct a replacement vessel as aforesaid, no adjustment [116] will be made in the contract price on account of such replacement. In the event however, that the Contractor is, pursuant to the provisions of this Article, relieved of its obligations to

deliver any Vessel, the contract price stated in Article 4 shall be reduced by an amount equal to such price divided by the number of Vessels to be constructed hereunder, and the maximum amount payable under the provisions of paragraph (d) of Article 15 shall be reduced in the same proportion.

Article 34. Arbitration. Notwithstanding any other provisions to the contrary, in any case where this agreement provides that determination by the Commission of a question of fact shall be final or conclusive, the Contractor may, within 10 days after the making of such determination, give notice to the Commission of its appeal therefrom. Questions of fact with respect to which an appeal is so taken shall be referred to arbitrators, the Commission and the Contractor each designating one and the two thus appointed, in case of disagreement, designating a third as umpire. The arbitrators shall give prompt notice to both parties of their determination of such questions of fact, which shall thereupon supersede the determinations of the Commission and shall be binding upon the Commission and the Contractor.

Article 35. Effect of this Contract. Said Travares Construction Company, Inc. and the partnership of Stroud and Seabrook, as well as the members of such partnership, and C. M. Elliott shall be jointly and severally bound hereunder and all of said individuals and said corporation and said partnership shall be bound by the acts or representations of any one of said individuals, said corporation, said partnership or the members thereof, and payment by the Commission to any one shall constitute payment to all of them. Wherever reference is made herein to the "Contractor" it shall mean said individuals, said

partnership, the members of said partnership and said corporation, both as individuals and as joint venturers.

In Witness whereof, the parties hereto have executed this agreement as of the day and year first above written.  
(Seal)

UNITED STATES MARITIME COMMISSION

By: E. S. LAND

Chairman

Attest:

W. C. PEET, JR.

Secretary

(Seal)

TAVARES CONSTRUCTION COMPANY, INC.

By: HENRY M. PAGE

Vice President

Attest:

DON F. GATES

Secretary

STROUD AND SEABROOK

By: LLOYD S. STROUD

Lloyd S. Stroud

(Individually and as a partner)

By: R. S. SEABROOK

R. S. Seabrook

(Individually and as a partner)

C. M. ELLIOTT

C. M. ELLIOTT

Approved as to form:

WADE H. SKINNER

Assistant General Counsel

U. S. Maritime Commission [117]

EXHIBIT 3

TIDELANDS LEASE

This Indenture of Lease made and entered into this 1st day of January, 1942, by and between City of National City, hereinafter referred to as the "City," and the Tavares Construction Company, Incorporated, a California Corporation, hereinafter referred to as the "Corporation";

Witnesseth, as follows:

That said City, under and by virtue of the laws of the State of California, has jurisdiction over certain Tidelands in San Diego Bay adjacent to National City, and by this agreement does rent and lease to the Corporation the following described tidelands and subject to the following terms and conditions:

First: The property covered by this lease is described as follows:

Commencing at bulkhead point #302, as established by U. S. Engineer Department; thence S 6° 35' 32" E. 409.09 feet to point of beginning; thence N 83° 24' 28" E. 1379.87 feet; thence S 10° 02' 45" W. 655.58 feet; thence S 83° 24' 28" W. 987.17 feet; thence N 6° 35' 32" W. 76.0 feet; thence S 63° 03' 59" W 218.63 feet; thence N 6° 35' 32" W 628.14 feet to point of beginning.

Said property is delineated upon the blue print attached hereto and made a part hereof, and contains approximately 800,009 square feet.

Second: The term of this lease shall commence on the 1st day of January, 1942, and shall extend for a term of



five years ending December 31, 1946, with the option hereby granted for an additional term of five years, and with a second option for an additional extension of an additional term of five years, and for a third option for an additional extension of an additional five years thereof. In the event of the election of the Corporation to continue such lease for the additional five years continuance in accordance with each of said options, the Corporation shall give notice in writing to said City, thirty days prior to the termination of this lease or extension thereof, by either or all of said options.

Third: The Corporation agrees to pay to the City as rental for the described property the sum of Eight Thousand Dollars (\$8,000.00) per year. Said rentals shall be paid as follows: Four Thousand Dollars (\$4,000.00) upon the execution of this agreement and Four Thousand Dollars (\$4,000.00) on the first of July, 1942; and thereafter semi-annual payments of Four Thousand Dollars (\$4,000.00) each on the 1st day of January and the 1st day of July each and every year thereafter.

Fourth: The Corporation shall have the right to assign the lease or any portion or to sublease any portion of the leased premises. In the event of an assignment of the lease, or any portion thereof or in the event of a sublease, to Defense Plant Corporation or any other department, branch or agency of the United States Government, the Tavares Construction Company, Incorporated shall make all rental payments to the City of National City, notwithstanding such assignment or sublease, and shall also make all payments of taxes with respect to real property used or placed upon the premises by the Defense Plant Corporation or any other department, [118] branch or agency of the United States Government.



Fifth: In the event that the Corporation shall fail to pay to the City the rental sum for said leased premises, when due, the City may terminate this lease agreement without the necessity of a demand or notice to said Corporation. In that event the Corporation shall have sixty (60) days from date of default to remove it's property and equipment. With the exception of pilings and ship basins. The Corporation or its assigns shall have the right after one year to terminate or cancel the lease upon thirty (30) days prior written notice to lessor.

Sixth: The Corporation shall indemnify and keep the City harmless from any claims, costs of judgment proximately resulting from its operations and occupancy under the terms thereof; provided, however, that prompt notice of any such claim as may be filed with the City shall be given to the Corporation and it shall be afforded the timely privilege and option of defending the same.

Seventh: Lessee, its assigns or sublessee shall have the right, subject only to the limitations imposed by law, to construct, erect, affix or maintain upon the leased premises, buildings, structures, improvements, machinery and equipment of any kind or character whatsoever, and it is expressly understood and agreed that as between lessors and lessee, such buildings, structures, improvements, machinery and equipment so constructed, erected, affixed, or maintained, regardless of how the same may be affixed thereto, shall at all times be deemed to be personal property and lessee or its sublessee shall have the right to remove the same, with the exception of pilings and ship basins, at any time during the term of the lease or any extension thereof, or within a period of sixty (60) days

following expiration, cancellation or termination of the lease or any such extension.

Eighth: In event of breach by the Corporation of any of the covenants herein contained, the City may serve notice in writing upon the Corporation that if such breach is not cured within a sixty-day period, the City may declare this lease at an end, and upon such a declaration by the City of its termination of this lease, the said Company shall remove from the said demised premises and have no further right or claim thereto, and the City shall immediately thereupon, without recourse to the Court, have the right to take possession of said premises, and said Corporation shall forfeit all rights and claims thereto and thereunder; provided, however, that in the event of a termination of this lease as in this paragraph provided, the Corporation may within such reasonable time as the City may designate, remove all buildings, structures and equipment and other personal property of the Company, except pilings and ship basins, from the premises herein leased, or otherwise dispose of the same; provided further, that no such termination shall in any wise relieve the Company from the obligation to pay any rentals and charges accrued and unpaid up to the time thereof.

Ninth: Notwithstanding the conditions herein expressed, it is understood and agreed that the City reserves to its Council the right and privilege to annul, change or modify this lease upon the violation of any of the provisions hereof by the lessee, as in its judgment may seem

proper. Reference is hereby made to all existing laws relating to the leasing of tidelands by the City of National City and by such reference all restrictions or conditions imposed and reservation granted are hereby made a part of this lease with the same effect as though expressly set forth herein. [119]

Tenth: Any rights or liabilities acquired by the Maritime Commission under this lease may be terminated by the Maritime Commission after one year from date of execution by giving written notice of said termination to the City, this shall in no wise affect the rights and liabilities of the said Corporation under and by virtue of this lease.

Eleventh: The City hereby grants to the Corporation an option of taking a lease upon the following described premises:

Beginning at bulkhead point #302, as established by U. S. Engineer Department; thence N 77° 00' 39" E. 1487.11 feet; thence S 2° 20' 45" W. 527.48 feet; thence S 10° 02' 45" W. 56.0 feet; thence S 83° 24' 28" W. 1379.87 feet; thence N 6° 35' 32" W. 409.09 feet to point of beginning.

Said property is delineated upon the blue print attached hereto and made a part hereof, and contains approximately 702,811 square feet, for a term of two years at an annual rental of one cent (.01¢) per square foot, said rental payable semi-annually in advance. This option shall be exercisable by notice in writing by the Corpora-

tion to the City at any time within two years from the date hereof.

In Witness Whereof said City of National City has caused this lease to be executed by its Mayor, and to be attested by its Clerk, and said Corporation has caused the same to be executed by its duly authorized officers.

CITY OF NATIONAL CITY

by Frederick J. Thatcher (Sgd.)

Mayor

Dated: February 2, 1942

Attest:

Dale Smith

City Clerk

TAVARES CONSTRUCTION COMPANY, INC.

by ..... (Sgd.)

President

Don F. Gates (Sgd.)

Secretary [120]

### ASSIGNMENT OF LEASE

Know All Men By These Presents:

That the undersigned, Tavares Construction Company, Incorporated, a California Corporation, for and in consideration of One Dollar (\$1.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby assign, transfer and set over to the Defense Plant Corporation, an agency of the United

States Government, all that certain lease dated January 13, 1942, executed by the City of National City, a Municipal Corporation, as grantor, the following described tidelands in San Diego Bay adjacent to said City of National City and more particularly described as:

Commencing at bulkhead point #302, as established by U. S. Engineer Department; thence S 6° 35' 32" E. 409.09 feet to point of beginning; thence N 83° 24' 28" E. 1379.87 feet; thence S 10° 02' 45" W. 655.58 feet; thence S 83° 24' 28" W. 987.17 feet; thence N 6° 35' 32" W. 76.0 feet; thence S 63° 03' 59" W 218.63 feet; thence N 6° 35' 32" W 628.14 feet to point of beginning.

and,

Beginning at bulkhead point #302, as established by U. S. Engineer Department; thence N 77° 00' 39" E. 1487.11 feet; thence S 2° 20' 45" W. 527.48 feet; thence S 10° 02' 45" W. 56.0 feet; thence S 83° 24' 28" W. 1379.87 feet; thence N 6° 35' 32" W. 409.09 feet to point of beginning.

To have and to hold the same from the date hereof for the remainder of said lease.

Dated this 30th day of January, 1942.

TAVARES CONSTRUCTION COMPANY, INC.

by ..... (Sgd.)

President

Don F. Gates (Sgd.)

Secretary [121]



EXHIBIT 4

Contract No. MCc-20,984

This Contract, entered into as of the 26th day of October, 1943, by and between the United States Maritime Commission (herein called the "Commission") and Tavares Construction Company, Inc., a corporation organized and existing under the laws of the State of California, Lloyd S. Stroud and R. S. Seabrook, individually and as a partnership of Stroud and Seabrook, and C. M. Elliott, Carlos Tavares, Henry M. Page, and Don F. Gates, said corporations and persons being joint venturers doing business under the name of Concrete Ship Constructors (herein called the "Contractor");

Whereas:

1. Under the provisions of Public Law No. 5 (77th Congress), approved February 6, 1941, the Commission is authorized to construct, reconstruct, repair, equip and outfit, by contract or otherwise, vessels or parts thereof for any other department or agency of the United States Government to the extent that such department or agency is authorized by law to do so for its own account;

2. The War Department has requested the Commission to have constructed and equipped certain concrete barges of the type referred to in this contract; and

3. The Commission desires the Contractor to construct the aforementioned concrete barges upon the terms and conditions hereinafter set forth.



Now, Therefore, in consideration of the premises and of the mutual promises hereinafter set forth, the parties hereto agree as follows:

Article 1: General Statement of Work. The Contractor will furnish all labor, materials, supplies and equipment, and will perform all work necessary to construct, build and deliver, at its own risk and expense, twenty-five barges (herein called the "Vessels") in strict accordance with the plans and specifications referred to in Article 2 hereof, and will do everything required of the Contractor by this contract and the plans and specifications, including the installation of outfitting and equipment furnished by the Commission, all for the consideration of \$7,600,000 (based on \$304,000 per vessel), herein called the "contract price", together with such additions and subject to such deductions as are herein provided for.

The Vessels shall be constructed at a shipyard (herein called the "Shipyard") owned by Defense Plant Corporation and leased to said Tavares Construction Company, Inc. Subject to the terms and conditions of such lease agreement, the Contractor shall have the right to use such Shipyard for the purpose of performing the work hereunder without the payment of rental or any charge therefor.

The work under this contract shall be commenced within thirty days of the date hereof and each of the Vessels shall be completed in accordance with the following schedule:

<u>Commission's Hull Numbers</u>	<u>Contractor's Hull Numbers</u>	<u>Delivery Dates</u>
2214		January 28, 1944
2215		January 30, 1944
2216		January 31, 1944
2217		February 15, 1944
2218		February 19, 1944
2219		February 23, 1944
2220		February 25, 1944
2221		February 27, 1944
2222		February 29, 1944
2223		March 10, 1944
2224		March 15, 1944
2225		March 20, 1944
2226		March 25, 1944
2227		March 28, 1944
2228		March 31, 1944
2229		April 5, 1944
2230		April 10, 1944
2231		April 15, 1944
2232		April 20, 1944
2233		April 25, 1944
2234		April 30, 1944
2235		May 5, 1944
2236		May 15, 1944
2237		May 22, 1944
2238		May 31, 1944     [122]

Article 2: Plans and Specifications; Interpretation and Changes.

(a) The drawings, plans and specifications (herein called the "plans and specifications") designated "Design B5-BJ1", of the Vessels have, at or before the execution

of this contract, been identified by the signatures of the parties hereto and are hereby made a part hereof with the same force and effect as though herein set out in full.

(b) If any discrepancy, difference, or conflict exists between the provisions of this agreement and the plans and specifications, then, to the extent of such discrepancy, difference or conflict only, the plans and specifications shall be ineffectual and the provisions hereof shall prevail; but in all other respects the plans and specifications shall be in full force and effect. Any question whether the plans and specifications are in conflict with the provisions of this instrument and any conflict or discrepancy between the plans and specifications themselves shall be brought to the attention of the Commission; in such cases specific directions will be given in writing by the Commission to the Contractor and compliance by the Contractor with such directions shall be obligatory.

(c) The Contractor shall not (except as provided in subsection (c)) depart from the requirements of the plans or specifications without prior written approval of the Commission. The Contractor shall, in making application to the Commission for changes in the plans or specifications, set forth clearly the reasons for and advantages of such changes.

Article 3: Adjustments of Price for Change in Plans and Specifications. Within 10 days (or such longer period as the Commission may allow) after receipt of direction from the Commission to make changes in the plans, specifications, or of approval by the Commission of changes requested by the Contractor, the Contractor will furnish to the Commission in writing a statement of its estimate of the net increase or net decrease in cost to result from such change. The Commission (or a Board

or Committee designated by it to act in its behalf) shall consider the statement so submitted by the Contractor and on the basis thereof and of such other material as it may deem relevant shall determine and furnish to the Contractor the amount of any such net increase or net decrease in cost. In the event of a net increase, the amount thereof plus 10 per cent shall be added to the contract price. In the event of a net decrease, the amount thereof shall be deducted from the contract price.

Article 4: Increase in Price for Increased Labor or Material Costs. The contract price stated in Article 1, as adjusted from time to time, is subject to an increase for increased labor or material costs, determined as follows:

1. Labor:

- (a) The portion of the contract price represented by labor is accepted (for the purposes of this Article only) as \$2,669,000, divided into labor costs quotas for each month of the construction period as follows:

<u>Months After November 1, 1943</u>	<u>Per Cent Increment</u>	<u>Amount</u>
1	1.6	\$ 42,560
2	7.7	204,820
3	22.2	590,520
4	22.6	601,160
5	22.9	609,140
6	16.5	438,900
7	6.5	172,900

- (b) The Commission will obtain from the United States Department of Labor, Bureau of Statistics, the index for the Pacific Coast Zone of the average hourly earnings of production workers in the shipbuilding companies having contracts with the United States Maritime Commission and the Navy Department for the month of October, 1943. The Commission will similarly obtain such average hourly earnings for each subsequent month of the contract period and shall determine to the nearest 1/10th of 1 per cent the percentage, if any, by which such average hourly earnings for the monthly period are greater or less than the average hourly earnings for the month of October, 1943. The percentage of increase or decrease so determined will be applied to the quota above stated for the monthly period and the contract price will be correspondingly increased or decreased.

2. Material:

- (c) The portion of the contract price represented by materials is accepted (for the purposes of this Article only) as \$2,705,600.
- (d) The material cost determined in (c) is hereby divided into material cost quotas for each quarterly period of the contract, as follows:

<u>Quarters After</u> <u>November 1, 1943</u>	<u>Per Cent</u> <u>Increment</u>	<u>Amount</u>
1st (3 months)	61.6	\$1,666,650
2nd (3 months)	37.9	1,025,422
3rd (1 month)	0.5	13,528

- (e) The Commission will obtain from the United States Department of Labor, Bureau of Statistics, the index number of wholesale prices for Group VII, building materials, for the month of October, 1943. The Commission will similarly obtain such index number for each subsequent month of the contract period. The average of the index numbers so obtained for the months included in each quarterly period shall be taken as the index number for such period. The Commission shall determine to the nearest 1/10th of 1 per cent the percentage, if any, by which such average index number for the quarterly period is greater than the index number for the month of October, 1943. The percentage of increase so determined will be applied to the quota above stated for such quarterly period, and the contract price will be correspondingly increased.

3. General:

- (f) The Commission reserves the right to substitute for the index for labor or material any other method or index satisfactory to the Contractor should it at any time in the judgment of the Commission appear that the specified indices do not reflect equitably the increases in costs of material or labor under the contract.
- (g) Payments for increases in contract price pursuant to this Article will be deferred un-



til final payment, provided, however, that the Commission may make partial payments on [124] account of such increases as may accrue from time to time subject to such requirements and conditions precedent to such payments as it may prescribe.

Article 5: Extension of Time for Completion: Termination in Event of Total Loss.

(a) Within 10 days (or such longer period as the Commission may allow) after receipt of direction from the Commission to make changes in the plans and specifications, or approval by the Commission of changes requested by the Contractor, the Contractor will furnish to the Commission in writing a statement of its estimate of the probable resulting delay in completion of the work on the Vessel or Vessels affected by such change. The Commission (or a Board or Committee designated by it to act in its behalf) shall consider the statement so submitted by the Contractor and on the basis thereof and of such other material as it may deem relevant shall determine and furnish to the Contractor in writing a statement of the estimated period of such resulting change, and the date for the completion of the Vessels affected shall be correspondingly extended. If it is later established to the satisfaction of the Contractor and the Commission that the actual delay resulting from such changes varies from such estimate, the extension shall be adjusted accordingly.

(b) In case of any delay caused by the Commission or in case of occurrence of any cause of delay beyond the control of the Contractor, including without limitation acts of God (other than ordinary storms) earthquakes, lightning, floods, or fire, strikes, riots, insurrections, or

war, or delays of subcontractors due to such enumerated causes, written notice thereof and of the anticipated effect thereof shall be given promptly by the Contractor to the Commission. Within 20 days after such cause of delay has ceased to exist, the Contractor shall file with the Commission a statement of the actual delay resulting from such cause. The Commission (or a Board or Committee designated by it to act in its behalf) shall determine the duration of such delay, and the time for the completion of the Vessel or Vessels, the delivery of which has been delayed thereby, shall be correspondingly extended, but only if such delay actually caused delay in the final completion and delivery of the Vessels affected.

(c) If it shall appear to the satisfaction of the Commission that the Contractor has ordered all necessary materials at the proper times and used every reasonable effort to obtain delivery of such materials at the time and in the order required to carry on the work properly but that non-delivery of such materials delayed the completion of any of the Vessels the Commission may, in its discretion, grant such extension of time for the completion of the Vessel or Vessels, delivery of which has been delayed thereby, as it may deem proper under the circumstances.

(d) Without prejudice to the Contractor's rights, the determination of any and all claims for extension of the time for completion shall, at the request of either the Commission or the Contractor, be postponed until the completion of the Vessels.

Article 6: Contractor to Receive and Care for Items Furnished by Commission. The Contractor shall, at its own expense, receive, inspect, check as to agreement with bill of lading, store, insure, protect, and install aboard

the Vessels prior to delivery, all or any of the items required by the specifications or otherwise to be furnished by the Commission.

Article 7: Materials and Workmanship—Domestic Preference. Unless otherwise specifically provided for in this specification, all workmanship, equipment, materials, and articles incorporated in the Vessels covered by this contract are to be of a suitable grade of their respective kinds for the purpose. Where equipment, materials or articles are referred to in the specifications as “equal to” any particular standard, the Commission shall decide [125] in case of dispute, the question of equality, and the decision of the Commission thereon shall be final and conclusive upon the Contractor. The Contractor shall furnish to the Commission for its approval the name of the manufacturer of machinery, mechanical and other equipment, which it contemplates incorporating in the Vessels. When required by the specifications or when called for by the Commission, the Contractor shall furnish full information concerning the materials or articles that it contemplates incorporating in the Vessels. Samples of materials shall be submitted for approval when so directed.

In the performance of the work covered by this contract the Contractor, subcontractors, material men, or suppliers shall use only such unmanufactured articles, materials, and supplies, as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States; the foregoing provision shall not apply to such articles, materials, or supplies of the

class or kind to be used or such articles, materials, or supplies from which they are manufactured as are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or to such articles, materials, or supplies as may be excepted by the head of the Department under the proviso of Title III, Section 3 of the Act of Congress approved March 3, 1933 (41 U. S. C. 10).

Article 8: Inspection—Approval of Plans.

(a) All material and workmanship (not otherwise designated by the specifications) shall be subject to inspection, by inspectors of the Commission at any and all proper times during manufacture or construction at any and all places where such manufacture or construction is carried on.

(b) The Contractor shall furnish promptly, without additional charge, all reasonable facilities and materials, including suitably furnished offices with light, heat, telephone, desks, drawing tables, and filing cabinets, necessary for the safe and convenient inspection and test that may be required by the inspectors.

(c) Blue prints of all working plans as they are prepared during the progress of the work shall be submitted (in such numbers as may be required) to the Commission for action and it shall promptly take appropriate action in the time required by the specifications. Requisitions for all materials requiring Commission approval are to be forwarded to the Commission with necessary information before purchases of such materials are made. The Commission shall promptly pass on all plans and requisitions submitted for action.

(d) The Commission shall promptly pass all work and material conforming to the requirements of this contract, and shall promptly reject all work and material not conforming to the requirements of this contract. Rejected workmanship shall be satisfactorily corrected, and rejected material shall be satisfactorily replaced with proper material without charge therefor, and the Contractor shall promptly segregate and remove the rejected material.

(e) All inspection and tests by the Commission shall be performed in such manner as not to unnecessarily delay the work. The Contractor shall be charged with any additional costs of inspection when material and workmanship are not ready at the time inspection is requested by the Contractor.

(f) Any dispute between the Contractor and any representative of the Commission under this Article 8, shall be referred promptly to the Commission, and the decision of the Commission thereon shall be final and conclusive. [126]

(g) The provisions of this Article 8 are subject to the provisions of other Articles of this Contract and the specifications relative to the trials and acceptance of the Vessels.

Article 9: Trials, tests and Delivery. When each Vessel is completed as required by this contract and has passed in a manner satisfactory to the Commission all the trials and tests prescribed in the specifications, the Commission shall accept delivery of such Vessel.

Article 10: Guaranty Period. If at any time within 6 months after the acceptance of each Vessel any weakness, deficiency, defect, failure, breaking down or deterioration in such Vessel, due to defective workmanship or material



supplied by the Contractor including her machinery, appurtenances, and equipment, other than that due to wear and tear, or the negligence or other improper act or omission of the Commission or other operator thereof shall appear, the Contractor shall be required to make good, at its expense, any such defects to the satisfaction of the Commission. Any such work required to be done is to be carried out at a port agreeable to the Commission. In computing said period of 6 months from date of acceptance, the time, if any, but only such time, during which the Vessel is not available for service on account of any weakness, deficiency, defect, failure, breaking down or deterioration of the Vessel for which the Contractor is responsible, shall be excluded.

The Contractor shall be informed of all defects and deficiencies discovered during said guaranty period for which it is held responsible, and, whenever practicable, shall be given an opportunity to inspect the same before the defects and deficiencies are remedied, and the decision of the Commission as to the responsibility of the Contractor for such defects and deficiencies shall be final and binding on the Contractor.

#### Article 11: Payment of Contract Prices.

(1) Partial payments shall be made by the Commission to the Contractor as the work progresses, at the end of each calendar month or as soon thereafter as practicable: Provided, however, that payments made prior to the final payment herein shall not exceed in the aggregate 96 per cent of the value (as represented by the contract price) of the work done and materials delivered to the yard for the construction of the Vessels, and provided, further, that the



Commission may, on such terms and conditions as it may prescribe, include, as part of the value of the work done on the Vessels work performed by any Subcontractor on materials, machinery or equipment to be installed in the Vessels, even though such Subcontractor has not made delivery thereof at the yard or plant of the Contractor nor Completed the work required of him with respect thereto if the title to such materials, machinery or equipment included as part of the value of the work done on the Vessels shall have vested in the Commission.

The Commission may, on such terms and conditions as it may prescribe, make payment to the Contractor of the full compensation, including retained percentages less authorized deductions, for each Vessel completed and accepted hereunder on the basis of \$304,000 per Vessel.

(2) No payments shall be made except on bills, vouchers, or invoices in such number and form and executed and attested in such manner as shall be prescribed by the Commission. All warrants for payment hereunder shall be made payable to the Contractor or order. [127]

Article 12: Report of Cost—Excess Profits—Subcontractors. The Contractor agrees;

(1) To make a report under oath to the Commission upon completion of this contract, setting forth in the form prescribed by the Commission the total contract price, the total cost of performing this contract, the amount of Contractor's overhead charged to such cost, the net profits and the percentage such

net profit bears to the contract price, and such other information as the Commission shall prescribe;

(2) To pay to the Commission profit, as shall be determined by the Commission, in excess of 10 per cent of the contract price: Provided, That, if such amount is not voluntarily paid, the Commission shall determine the amount of such excess profit and collect it in the same manner that other debts due the United States may be collected;

(3) To make no subdivisions of any contract or subcontract for the same article or articles for the purpose of evading the provisions of this Article, and any subdivision of any contract or subcontract involving an amount in excess of \$10,000 shall be subject to the conditions prescribed in this Article;

(4) That the books, files, and all other records of the Contractor, or any holding, subsidiary, affiliated, or associated company, shall at all times be subject to inspection and audit by any person designated by the Commission, and the premises, including the Vessel, of the Contractor, shall at all times be subject to inspection by the agents of the Commission.

(5) To make no subcontract unless the subcontractor agrees to the foregoing conditions of this Article 12.

It is understood and agreed that the provisions of this Article shall not apply to contracts or subcontracts for scientific equipment used for communication and navigation as may be so designated by the Commission.

The provisions of this Article shall not apply to any subcontract which would otherwise be within such provi-

sions if such subcontract is entered into in any taxable year of the subcontractor to which subchapter E of Chapter 2 of the Internal Revenue Code is applicable, and if such subcontractor is not affiliated, within the meaning of subsection (b) of Section 402 of the Second Revenue Act of 1940, at the time such subcontract is entered into, or any time thereafter, up to and including the date of its completion.

The requirement of payment by the Contractor to the Commission of profits as provided in this Article is contractual and shall in effect constitute a reduction in the contract price payable by the Commission as finally determined hereunder. The method of accounting for profits and the determination of costs incurred by the Contractor shall, however, be in accordance with the requirements of Section 505 (b) of the Merchant Marine Act of 1936 and the applicable regulations of the Commission issued thereunder.

Article 13: Title. The title to all materials, equipment, supplies and all other property assembled at the Contractor's plant or elsewhere for the purpose of being used for the construction of the Vessels as well as title to the Vessels themselves, on account of which payments are made shall immediately be vested in the Commission: Provided, however, that nothing herein contained shall be construed as a waiver by the Commission of its right to require the Contractor to replace, at Contractor's expense, unsatisfactory workmanship or materials as herein provided: Provided further, that the Contractor shall have an equity in any such material, equipment, supplies, and other property to the extent that it may not have been fully paid for by the Commission. [128]

Article 14: Taxes. The Contractor shall pay all United States, State, County, and City or other taxes, assessments or duties lawfully assessed against the Vessels, materials, supplies or equipment to be used under this contract prior to delivery thereof to the Commission. It is understood and agreed, however, that the contract price of the Vessels does not include any Federal tax imposed by Chapters 25 or 29 of the Internal Revenue Code or similar taxes which may hereafter be imposed on the Vessels or subsidiary articles to be purchased by the Contractor and incorporated therein, and that the Commission will issue a Government Tax Exemption Certificate (Standard Form 1094) covering this contract, together with authority to issue certificates of exemption with respect to subsidiary articles purchased by the Contractor on a tax-free basis and in accordance with T. D. 5114, approved January 27, 1942, and any amendments thereto or modifications thereof.

Article 15: Liens.

(a) When payment is to be made under this contract, as a condition precedent thereto, the Commission may, in its discretion, require evidence satisfactory to it, to be furnished by the Contractor showing what, if any, liens or rights in rem of any kind against said Vessels, or their machinery, fittings, or equipment, or the materials on hand for use in the construction thereof, have been or can be acquired for or on account of any work done, or any machinery, fittings, equipment, or material already incorporated as a part of said Vessels, or on hand for that purpose; but it is hereby further stipulated, covenanted, and agreed by the Contractor, for himself and on its own account and for and on account of all persons,

firms, associations, and corporations furnishing labor and material for said Vessels and this contract is upon the express condition that no liens or rights in rem of any kind shall lie or attach upon or against said Vessels or their machinery, fittings, or equipment, or the materials therefor, or any part thereof, or of either, for or on account of any work done upon or about the Vessels, machinery, fittings, equipment, or materials, or of any materials furnished therefor or in connection therewith, nor for or on account of any other cause, or thing, or of any claims or demands of any kind, except the claims of the Commission.

(b) If a lien or encumbrance arising out of the work is filed against the Vessels, or against any materials, equipment, supplies or other property intended therefor, the Contractor shall forthwith notify the Commission thereof, and the Commission, subject to the provisions of this Article 15, may satisfy the same and withhold the amount thereof, together with any expenses incurred in connection therewith from the amount of any payment or payments which may then be due or which may thereafter become due to the Contractor. If the amount of any such payments is insufficient to permit the deduction of the entire cost and expense so incurred by the Commission, the Contractor shall, nevertheless, be liable to the Commission for the deficiency and will pay the same to the Commission on demand. In the event the Commission does not satisfy any such lien or encumbrance, it may, nevertheless, withhold the amount thereof, as provided above, unless and until such lien or encumbrance is satisfied by the Contractor.

(c) If a lien or encumbrance arising out of the work is filed against the Vessels or the materials, equipment,



supplies, or other property intended therefor, the Contractor shall, within 15 days thereafter, cause the Vessels, materials, equipment, supplies or other property to be released and any lien on them or any of them to be discharged; nothing contained herein, however, shall be construed as preventing the Contractor from contesting any such lien or encumbrance or the debt to which it may relate, but in the event of any such contest it shall be the duty of the Contractor within the time named to procure by court order a release of the property [129] from the lien or encumbrance by the filing of a court bond, or otherwise, if any such remedy is available under the law; and in the event it is not, the Contractor shall then immediately take such steps as in the opinion of the Commission shall prevent such lien or encumbrance from delaying the work, and shall indemnify and save harmless the Commission from all costs, charges, and damages incurred, or possible of being incurred, by reason of such contest or in any way attributable thereto.

Article 16: Insurance on Vessels and Materials. Until the Vessels have been completed, physically delivered, and accepted by the Commission, the Vessels and all materials, outfitting, equipment, and appliances to be installed in the Vessels including all materials, outfitting, equipment and appliances provided by either the Commission for and used or to be used in the construction thereof shall, at the expense of the Contractor, be kept fully insured under Builder's Risk form of policies or other usual forms of insurance including loss or damage caused by strikers, locked out workmen, and/or persons taking part in labor disturbances, and/or riot or civil commotion in an amount at no time less than the aggregate of amounts paid the Contractor by the Commission under this agree-



ment plus the value of any materials, outfitting, equipment, and appliances furnished by the Commission. The amount of insurance, the terms of the policies, and the insurance companies, underwriters, or underwriting funds shall at all times be satisfactory to the Commission. All policies of insurance shall be taken out in the name of the Contractor for account of Whom It May Concern, and losses under such policies shall be made payable to the Commission for distribution by it to the Commission, or the Contractor as their respective interests may appear. All cover notes and policies, with all premiums or other charges prepaid, shall be delivered to the Commission for its approval and custody. Policies if not in conformance herewith shall be surrendered and cancelled upon direction of the Commission and new policies procured in conformance herewith.

Article 17: Injury to Employees. The Contractor shall indemnify and save harmless the United States, the Commission, and any other agency or instrumentality of the United States, and the Vessels, against all claims arising from injury to or death of employees, workmen, trespassers, licensees, and all other persons, whether in, on, or about the work to be performed hereunder or from damage to or loss of property, due to the act, neglect or default of the Contractor or subcontractors or their agents or employees; it being expressly understood that the workmen engaged upon the work on the vessel to be constructed hereunder shall at all times be employees of the Contractor or subcontractors and not of the Commission.

Article 18: Patent Infringement. The Contractor shall be responsible for any and all claims made against the Commission, or the Vessels for infringement of patents or patent rights or for the use of patented articles

in connection with the work and material furnished by the Contractor, and shall defend, save harmless, and indemnify the United States, the Commission, and every agency or instrumentality of the United States and the Vessels against all such claims and against all costs, expenses, charges, and damages which the said parties or any of them, may be obliged to pay by reason thereof, including expenses of litigation, if any; provided, however, that upon any such claim being made against said parties or any thereof, the Contractor will be promptly notified of such claim and also of any suit brought in connection therewith and will be given an opportunity to defend the same; and provided, that no payment on account of any such claim shall be made by the said United States, the Commission, or any other agency or instrumentality of the United States, unless either with the consent of the Contractor or pursuant to the decree of a proper court or tribunal. [130]

Article 19: Labor Laws.

(a) The Contractor shall not employ any person undergoing sentence of imprisonment at hard labor.

(b) The Contractor will report monthly, and will cause all Subcontractors to report in like manner, within 5 days after the close of each calendar month on forms to be furnished by the United States Department of Labor, the number of persons on their respective pay rolls, the aggregate amount of such pay rolls, the man-hours worked, and the total expenditures for materials. He shall furnish to the Department of Labor the names and addresses of all Subcontractors on the work at the earliest date practicable: Provided, however, That the requirements of this

paragraph shall be applicable only for work at the site of the construction project.

(c) The Contractor and subcontractors at the site of the construction project will comply with the provisions of Public Act No. 324, 73d Congress, approved June 13, 1934, (48 Stat. 948) and regulations duly issued thereunder, as in effect from time to time. In the event that such regulations, or any part thereof, are superseded or amended from time to time, any such change shall be effective, with respect to this contract, upon the date specified in the action effecting such change, or to the extent permitted thereby, at such earlier date as may be specified in a notice given by the Contractor to the Commission.

(d) The Contractor and its subcontractors shall pay all mechanics and laborers employed on work under this contract and directly upon the site of the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those which may be determined by the Secretary of Labor pursuant to the provisions of the Act approved March 3, 1931 (46 Stat. 1494) to be the prevailing rates for the various classes of such laborers and mechanics; and the scale of wages to be paid shall be posted by the Contractor in a prominent and easily accessible place at the site of the work. The Commission shall have the right to withhold from the Contractor and subcontractors so much of accrued payments as may be considered necessary by the Commission to pay to laborers and mechanics employed by the Contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and

mechanics on the work and the rates of wages received by such laborers and mechanics and not refunded to the Contractor, subcontractors or their agents. The Commission will furnish the Contractor with the wage scale determined by the Secretary of Labor as aforesaid, and until such wage scale is so furnished, the Contractor shall be under no obligations under the provisions of this paragraph.

(e) This contract is subject to the provisions of the Act of June 25, 1936, (Public No. 814), entitled "An Act to provide more adequate protection to workmen and laborers on projects, buildings, constructions, improvements, and property wherever situated, belonging to the United States of America, by granting to the several States jurisdiction and authority to apply their State workmen's compensation laws on all property and premises belonging to the United States of America."

Article 20: Eight-Hour Law. Until otherwise provided by law, provisions of law prohibiting more than 8 hours of labor in any one day of persons engaged upon work covered by this contract shall, in accordance with the provisions of the Act approved October 10, 1940 (Public No. 831, 76th Cong.), be suspended. The provisions of said Act approved October 10, 1940 are applicable to this contract. [131]

Article 21: Prohibition against Employment of Certain Persons—Fair Employment Practice. The Contractor shall not employ any person who advocates, or who is a member of an organization that advocates, the overthrow of the Government of the United States by force or violence to perform any part of the work under this contract, and as a condition to the employment of any



person for the performance of such work, the Contractor shall, if the Commission so directs, require such person to execute and to file an affidavit in such form as to satisfy the requirements of Public Law No. 5 (77th Congress), approved February 6, 1941, but the execution and filing of such affidavit shall be without prejudice to the right of the Commission to require such further evidence in the premises as it may deem desirable. The Contractor agrees that in the performance of the work under this contract, it will not discriminate against any worker because of race, creed, color or national origin. (Executive Order No. 8802, approved June 25, 1941.)

Article 22: Fees. The Contractor warrants that he has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or fee, contingent or otherwise. Breach of this warranty shall give the Commission the right to terminate the contract, or, in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or fee. This warranty shall not apply to commissions payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

Article 23: Working Capital. The Contractor covenants that it will have and maintain at all times sufficient working funds for carrying out its obligations hereunder and will make prompt payments for all labor, materials, services and other charges which are to be paid under this contract. The Commission reserves the right to pay at its option directly to any subcontractor, materialman, laborer or other person furnishing materials, labor or

services for the performance of the work hereunder any amounts which may from time to time be due and unpaid to such persons and to deduct from the payments which may otherwise be due the Contractor under the terms of this contract any amount so paid plus 5 percent thereof, provided it shall have given the Contractor 15 days notice of its intention to make such payment. In the event, however, the Commission exercises such right, it shall be liable to the Contractor for any overpayments which it may make and nothing in this Article contained shall be construed as conferring any rights upon any person or corporation not a party to this contract.

Article 24: Officials not to Benefit nor be Employed. No member of or delegate to Congress, nor Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, except as provided in Section 116 of the Act approved March 4, 1909, (35 Stats. 1109). No member of or delegate to Congress, nor Resident Commissioner, shall be employed by the Contractor either with or without compensation as an attorney, agent, officer, or director. (Sec. 805(e), Merchant Marine Act, 1936.)

Article 25: Events of Default. The following shall constitute events of default under this agreement:

(a) The failure of the Contractor to prosecute the work with such diligence and in such manner as will enable it to deliver the Vessels in accordance with the delivery dates set forth herein, except and to the extent that such failure is due to "force majeure" as hereinbefore defined, provided that the Commission shall have given the Contractor notice of such failure and that the Contractor shall not within 15 days of the date of receipt of



such notice have shown to the satisfaction of the Commission that it has taken steps [132] sufficient to remedy the failure in a manner satisfactory to the Commission.

(b) The failure of the Contractor in any other respect to use due diligence in the performance of the work hereunder or its failure to perform any of the covenants, agreements or undertaking on its part to be performed hereunder, including, but not limited to, its agreement to make prompt payment for all labor, materials, services and other charges which are to be paid under this contract, provided, that the Commission in either instance shall give notice to the Contractor as to such failure, and the Contractor shall not within 15 days after being so notified correct any failure to use due diligence or undertake the performance of said covenants, undertakings or agreements required to cure such failure and thereafter prosecute in good faith to completion all such work or performance required to cure such failure.

(c) The filing by the Contractor of a petition in bankruptcy or for reorganization under the Bankruptcy Act or the entry of an order upon petition against the Contractor adjudicating the Contractor a bankrupt, or the appointment of a receiver or receivers of the Contractor or any property belonging to the Contractor necessary for the performance of its obligations under this agreement.

Article 26: Termination upon Default. In the event any one or more of the events of default specified in the preceding Article shall have occurred, the Commission may, if it so elects, terminate this contract and take possession of the Shipyard, all Vessels either completed or uncompleted, or work in process, and all plans, calculations, memoranda, accounts and records necessary for the

performance of the work hereunder. In the event the Commission takes possession of the Shipyard as aforesaid, the right of the Contractor to use such Shipyard, either under the terms of this contract or any other agreement between the Contractor and the Commission or Defense Plant Corporation, shall terminate, and the Contractor shall release any right, title or interest, including options to purchase, which may be contained in any such agreement. The Contractor may, however, withdraw from the Shipyard and take possession of such items of shipyard equipment and tools owned by the Contractor as would not be incorporated in any of the Vessels or consumed in their construction at such time as the last of the Vessels to be constructed hereunder shall have been completed by the Commission, if it shall have elected to complete the Vessels, or at such time as the Commission shall have notified the Contractor of its intention not to proceed or to abandon the work of completing the Vessels. Until the Contractor shall have the right to withdraw from the Shipyard said equipment and tools as aforesaid, the Commission shall have the right to use free of rental or any other charge such tools and equipment for the sole purpose of completing the Vessels.

In the event of termination under this Article, and if the Commission shall elect to have the Vessels completed, the Contractor shall (1) assign such subcontracts and orders for materials, services and supplies to be used in the performance of work hereunder to the Commission, as the Commission may direct, and (2) pay to the Commission the difference between the total cost to the Commission of completing the Vessels (including all amounts paid to the Contractor hereunder) and the total contract price as stipulated herein, as adjusted under the terms

of this contract. In the event that the Commission shall not elect to complete the Vessels, the Commission may, at any time within 120 days from date of termination hereunder, sell all partially completed Vessels, work in process, and materials and supplies at public sale and apply the proceeds therefrom (i) to the payment of the cost and expenses of said sale; (ii) to the payment of damages sustained by the Commission as a result of the [133] failure of performance of the Contractor, which damages shall be in an amount equal to the total payments made by the Commission to the Contractor under the terms of this contract, less that portion of the contract price which is assignable to Vessels completed prior to the date of termination hereof; and (iii) to the payment to the Contractor of the balance, if any.

The rights conferred upon the Commission under the terms of this Article are in addition to and not in substitution of any rights which the Commission would have in either law or equity upon the happening of the events of default specified herein, or upon any failures on the part of the Contractor to perform the undertakings, agreements and covenants on its part to be performed hereunder. The failure of the Commission to exercise the rights conferred upon it hereunder in any one or more instances of the occurrence of an event of default as hereinbefore defined shall not constitute a waiver of its rights to subsequently terminate this contract as herein provided.

Article 27: Optional Termination of Work hereunder by the Commission.

(a) At any time prior to the completion of the work to be performed under this contract, the Commission may terminate such work, in whole or in part, by notice in

writing. Except as may be otherwise directed in such notice, or as may be required for the purposes of carrying out of any directions contained therein, the Contractor, upon receipt thereof, shall promptly (i) terminate the performance of all work of constructing the Vessels and (ii) notify all subcontractors, suppliers, and other persons who have agreements to furnish labor, materials, or services for the performance of work hereunder, to terminate work under such agreements.

(b) The Commission shall upon termination of work under the provisions of this Article pay promptly to the Contractor an amount equal to the contract price of each Vessel delivered and constructed hereunder. Such contract price shall be deemed to be the amount stated in Article 1 hereof as the price per Vessel, plus or minus, as the case may be, those portions of the adjustments in contract price provided for in Article 3 and Article 4 of this contract, to the extent that such adjustments are applicable to the work performed hereunder.

(c) In addition to the payments provided for under the provisions of paragraph (b) of this Article, the Commission shall pay to the Contractor an amount which the Commission and the Contractor shall agree by supplemental agreement to be reasonably necessary to compensate the Contractor for the whole or any portion of its costs, expenditures, liabilities, commitments and work in respect to Vessels not to be delivered as the result of termination hereunder, and expenses resulting from the termination, provided that such supplemental agreement shall not provide for payment in excess of the maximum amount specified in paragraph (e) hereof.

(d) In the event the Commission and the Contractor shall be unable to reach an agreement as to the amounts to be paid under paragraph (c) of this Article, then the Commission shall, subject to the limitations set forth in paragraph (d) hereof, pay to the Contractor in addition to the payments provided for in paragraph (c) the sum of the following amounts (less any amounts theretofore paid on account of work performed on Vessels not delivered either prior or subsequent to the effective date of termination):

(1) An amount equal to all costs incurred by the Contractor in the performance of work under this contract, as determined by [134] the Commission, less such portion of such costs as is attributable for work performed on Vessels delivered either prior or subsequent to the date of completion;

(2) An amount equal to (i) eight per cent of the net amount payable under the provisions of subparagraph (1) hereof, exclusive, however, of such portion of such net amount as is attributable to the cost of unprocessed material, and (ii) four per cent of that portion of the net amount payable under subparagraph (1) hereof which is attributable to the cost of unprocessed material;

(3) An amount equal to any charges, costs and expenses incurred by the Contractor and approved by the Commission in connection with the termination of work under any subcontract, purchase order or other agreement where such termination is necessary because of termination of work under this agreement (exclusive, however, of such portion of any payments so made as shall represent the price of delivered ar-



ticles, which payment shall be included in the cost payable to the Contractor under subparagraph (1) hereof). The Commission shall include in such costs and expenses the following:

(i) Amounts paid by the Contractor to its subcontractors or others in accordance with the terms of the termination clause, substantially similar to this Article, or substantially similar to any clause which may have been approved by the Commission for inclusion in subcontracts at the time the subcontracts containing such clause were entered into;

(ii) An amount equal to any judgments paid by the Contractor as the result of an action for breach of contract based on termination of work under any subcontract or other agreement required on account of the termination of this contract under this Article, if such amount is not greater than would have been paid at the time the agreement was terminated not contained in the clause in regard to the termination thereof, and if the Commission shall have been given notice of the action and an opportunity to defend the notice named or that of the Contractor; and

(iii) Any other expenses or charges in connection with such termination which the Commission determined to be reasonable; and

(4) Reasonable legal and accounting fees and other expenses, including, but not limited to, the cost of taking inventories, the cost of shipment and selling items which shall become the property of the Com-

mission under paragraph (f) hereof, incurred by the Contractor in connection with the termination of work under this Article, or performance of services necessary to protect or preserve the interests of the Commission.

(e) In no event shall the total amount paid to the Contractor (exclusive of the amounts paid on account of the costs referred to in subparagraph (3) of paragraph (d) hereof, plus an amount equal to any credit which the Contractor is entitled to under paragraph (f) hereof, exceed the total contract price stipulated in this contract.

(f) Title to all work in process and materials and supplies on account of the cost of which the Commission shall make payment under the [135] provisions of the preceding paragraph shall, if such title is not theretofore vested in the Commission under the provisions of the other Articles of this contract, vest in the Commission, except in the case of such work, materials and supplies which the Contractor shall agree to purchase for the then fair value thereof, as determined by the Commission, title to which work, material and supplies shall vest in the Contractor. All work in process, materials and supplies not purchased by the Contractor shall be stored, packed or shipped, in such manner as the Commission may direct, or sold for the account of the Commission, if it so elects.

(g) In the event of termination of work under this Article, the profits which the Contractor shall be entitled to retain under the provisions of Article 12 shall be limited to 10 per cent of the contract price multiplied by the percentage of contract work completed either prior or subsequent to termination in accordance with the provisions of a notice of termination.

(h) The Contractor shall use reasonable care and in addition take such action as may be directed by the Commission to protect and preserve all work, materials and supplies in its possession and control in which the Commission has, or may under the terms of this Article acquire, an interest, and to reduce or prevent loss or damage to the Commission. The termination of all or part of the work under this Article shall not have the effect of terminating the rights and obligations of the parties, except to the extent herein specified.

Article 28: Arbitration. Notwithstanding any other provisions to the contrary, in any case where this agreement provides that determination by the Commission of a question of fact shall be final or conclusive, the Contractor may, within 10 days after the making of such determination, give notice to the Commission of its appeal therefrom. Questions of fact with respect to which an appeal is so taken shall be referred to arbitrators, the Commission and the Contractor each designating one and the two thus appointed, in case of disagreement, designating a third as umpire. The arbitrators shall give prompt notice to both parties of their determinations of such questions of fact, which shall thereupon supersede the determinations of the Commission and shall be binding upon the Commission and the Contractor.

Article 29: Reports of Espionage, Sabotage, or Subversive Activities.

(a) The Contractor shall immediately submit a confidential report to the Navy Department, with copies to the Commission or such other Government agencies as said Department may designate, whenever it has information in-

dicating (i) that any of its employees may be engaged in subversive activity at any place or (ii) that an active danger of espionage or sabotage exists at any plant, factory, or site at which work under the contract is being performed or at which material acquired, fabricated, or manufactured in connection with the performance of the contract is stored. The report shall contain a complete statement of such information. The Contractor shall instruct its personnel to submit any information coming to their attention with respect to the foregoing.

(b) The Contractor shall, whenever directed by the Navy Department or the Commission, submit to the Department any and all information which the Contractor may have concerning any of its employees engaged in work at any plant, factory or site at which work under the contract is being performed.

(c) The Contractor shall refuse to employ, or if already employing will forthwith discharge from employment, and will exclude from any [136] plant, factory or site at which work under the contract is being performed, any person or persons whom the Commission or the Secretary of the Navy or his duly authorized representatives, in the interest of security against espionage, sabotage or subversive activity, may designate.

(d) The Contractor, in each subcontract or purchase order which it may make or place under the contract, shall include stipulations conforming substantially to the language of the preceding paragraphs of this Article, if required by the Navy Department.

Article 30: Renegotiation.

(a) This contract is subject to the provisions of section 403 of the Sixth Supplemental Appropriation Act (Public Law 528, 77th Cong., 2nd Session), as amended and the Contractor hereby agrees that:

1. The contract price may be renegotiated pursuant to the provisions of said Section at a period or periods when, in the judgment of the Chairman of the United States Maritime Commission, the profits can be determined with reasonable certainty;
2. The United States may retain from amounts otherwise due the Contractor, or may require the repayment by the Contractor, if paid to him, of any excessive profits not eliminated by reductions in the contract price, or otherwise, as said Chairman may direct;
3. The Contractor will insert in each subcontract for an amount in excess of \$100,000 made by the Contractor under this contract;

(i) a provision for the renegotiation by said Chairman and the subcontractor of the contract price of the subcontract at a period or periods when, in the judgment of said Chairman, the profits can be determined with reasonable certainty;

(ii) a provision for the retention by the Contractor for the United States of the amount of any reduction in the contract price of any subcontract, pursuant to its renegotiation hereunder, or for the repayment by the subcontractor to the United States of any excessive profits from such subcontract paid to him and not eliminated through



reductions in the contract price, or otherwise, as said Chairman may direct;

(iii) a provision for relieving the Contractor from any liability to the subcontractor on account of any amount so retained by the Contractor, or repaid by the subcontractor to the United States; and

(iv) if the Chairman, in his discretion, shall so require, a provision requiring the subcontractor to insert in any subcontract made by him under such subcontract, provisions corresponding to those of this paragraph (3) and paragraph (4) hereof. [137]

4. The United States may retain from amounts otherwise due the Contractor, or may require the Contractor to repay to the United States, as said Chairman may direct, the amount of any reduction in the contract price of any subcontract made hereunder which the Contractor is directed, pursuant to paragraph 3 of this Article, to withhold from payments otherwise due the subcontractor and actually unpaid at the time the Contractor receives such direction.

In Witness Whereof, the parties hereto have executed this agreement as of the day and year first above written.  
(Seal)

UNITED STATES MARITIME COMMISSION

By: E. S. LAND

Chairman

Attest:

A. J. WILLIAMS

Secretary

(Seal)

CONCRETE SHIP CONSTRUCTORS  
TAVARES CONSTRUCTION COMPANY, INC.

By: CARLOS TAVARES  
President

Attest:

DON F. GATES  
Secretary

STROUD AND SEABROOK

By: LLOYD S. STROUD  
Lloyd S. Stroud

(Individually and as a partner)

By: R. S. SEABROOK  
R. S. Seabrook

(Individually and as a partner)

C. M. ELLIOTT  
C. M. Elliott

CARLOS TAVARES  
Carlos Tavares

HENRY M. PAGE  
Henry M. Page

DON F. GATES  
Don F. Gates

Approved as to form:

WADE H. SKINNER  
General Counsel

U. S. Maritime Commission [138]

Addendum No. 1

Contract No. MCc-20984

This Agreement, made and entered into as of the 7th day of January, 1944, by and between the United States Maritime Commission (herein called the "Commission") and Tavares Construction Company, Inc., a corporation organized and existing under the laws of the State of California, Lloyd S. Stroud and R. S. Seabrook, individually and as a partnership of Stroud and Seabrook, and C. M. Elliott, Carlos Tavares, Henry M. Page, and Don F. Gates, said corporations and persons being joint venturers doing business under the name of Concrete Ship Constructors (herein called the "Contractor");

Whereas:

1. Under date of October 26, 1943, the Commission and the Contractor entered into a contract (herein called the "Vessel Contract") for the construction by the Contractor of certain concrete barges;

2. The price for such concrete barges stipulated in such contract is subject to adjustment on account of increased labor and material costs, such adjustment to be made in accordance with estimated expenditures for labor and materials;

3. The Contractor has represented and the Commission has agreed that the estimated expenditures for labor and material set forth in the Vessel Contract require revision; and

4. The Commission and the Contractor desire to clarify certain of the provisions of the Vessel Contract.

Now, Therefore, the parties hereto agree as follows:

Article 1. The second paragraph of Article 1 of the Vessel Contract is hereby amended so as to add thereto a sentence reading as follows:

“The Contractor shall also have the right to use any shipyard equipment owned by the Commission, including, in addition to such items as cranes, trucks and the like, tools, patterns, used lumber and forms, but shall not have the right to use items of materials, supplies and equipment acquired for the Commission under any other contract which are consumed in or become a component part of the Vessels. In the event the Contractor shall desire to use any of the latter type of materials, supplies and equipment, the Commission will sell such materials, supplies and equipment to the Contractor for an amount equal to the cost thereof or such other amount as may be acceptable to the parties hereto.”

Article 2. Article 4 of the Vessel Contract is hereby amended so that paragraph (a) under subdivision 1 thereof entitled “labor” shall read as follows:

“(a) The portion of the contract price represented by labor is accepted (for the purposes of this Article only) as \$3,544,225, divided into labor cost quotas for each month of the construction period as follows: [139]

<u>Months After November 1, 1943</u>	<u>Per Cent Increment</u>	<u>Amount</u>
1	1.6	\$ 56,708
2	7.7	272,905
3	22.2	786,818
4	22.6	800,995
5	22.9	811,628
6	16.5	584,797
7	6.5	230,374"

and so that paragraphs (c) and (d) of subdivision 2 thereof entitled "Material" shall read as follows:

"(c) The portion of the contract price represented by materials is accepted (for the purposes of this Article only) as \$2,340,875.

"(d) The material cost determined in (c) is hereby divided into material cost quotas for each quarterly period of the contract, as follows:

<u>Quarters After November 1, 1943</u>	<u>Per Cent Increment</u>	<u>Amount</u>
1st (3 months)	61.6	\$1,441,979
2nd (3 months)	37.9	887,192
3rd (1 month)	0.5	11,704"

Article 3. Article 6 of the Vessel Contract is hereby amended so as to add thereto a sentence reading as follows:

"Nothing herein contained shall be construed as precluding the Contractor's right to an adjustment in contract price pursuant to the provisions of Article 3 hereof in the event the Contractor is required to make installations not contemplated by the plans and specifications."



Article 4. The Contractor shall comply with all safety, security and passive defense requirements in effect as of the date of the Vessel Contract. The Contractor shall have no obligation, however, in connection with such requirements to acquire or construct additional shipyard facilities at the site of the Shipyard referred to in the Vessel Contract unless the Commission shall make available to the Contractor the funds necessary therefor.

Article 5. Nothing contained in the Vessel Contract or in this agreement shall have the effect of divesting the Commission of title to any item of material or equipment or supplies unless the Contractor shall purchase such item pursuant to the provisions of Article 1 of the Vessel Contract as amended by Article 1 hereof, and will acquire on behalf of the Commission all items of equipment, all or part of rentals paid on account of which have been reimbursed to the Contractor or included in the costs allowable under any contract between the Contractor and the Commission other than the Vessel Contract, if under the terms of the rental agreement the Contractor shall be entitled or have an option to acquire such item when the rentals paid thereunder shall equal a stated amount, but the Contractor shall have no obligation to continue the rental of any such item of equipment except as hereinafter expressly provided. The Contractor hereby agrees that unless otherwise directed by the Commission it will continue to rent those items of equipment rented by it as of the date of the Vessel Contract under rental agreements which provide that the title to the items so rented

shall vest in [140] the Commission when the rentals paid equal the replacement value, in the event that the rentals paid on such date equalled 60 percent of such value, provided, however, that if the Contractor shall, prior to the date on which it shall be entitled to acquire title as aforesaid for the Commission, notify the Commission that it no longer requires the item or items of equipment so rented for use at the shipyard referred to in the Vessel Contract, the Commission will elect either to permit the Contractor to cancel the rental agreement or to take an assignment thereof from the Contractor.

Article 6. In addition to performing the work called for by the Vessel Contract and the plans and specifications referred to therein, the Contractor will perform the work described on Exhibit A attached hereto, and the total contract price shall be increased in the sum of \$2,337,500; that is, \$93,500 per vessel.

In Witness Whereof, the parties hereto have executed this agreement as of the day and year first above written.  
(Seal)

UNITED STATES MARITIME COMMISSION

By: E. S. LAND

Chairman

Attest:

R. L. McDONALD

Assistant Secretary

(Seal)

CONCRETE SHIP CONSTRUCTORS  
TAVARES CONSTRUCTION COMPANY, INC.

By: CARLOS TAVARES  
President

Attest:

DON F. GATES  
Secretary

STROUD AND SEABROOK

By: LLOYD S. STROUD  
Lloyd S. Stroud  
(Individually and as a partner)

By: R. S. SEABROOK  
R. S. Seabrook  
(Individually and as a partner)

C. M. ELLIOTT  
C. M. Elliott

CARLOS TAVARES  
Carlos Tavares

HENRY M. PAGE  
Henry M. Page

DON F. GATES  
Don F. Gates

Approved as to form:

WADE H. SKINNER  
General Counsel

U. S. Maritime Commission [141]

## EXHIBIT A

a. Monorail System. Consists of four (4) light-weight bridge cranes running athwartship over the hatches, each bridge connecting to a single line monorail running fore and aft in the center of the ship, which in turn connects through switches to two (2) monorails running athwartship and extending 12' outboard of the ship, the outboard ends of the monorail to consist of removable jibs. Four (4) 2-ton capacity electric hoists, mounted on carriers, shall be provided. The carrier units shall be equipped with two (2) sets of 1/2 H.P. drivers and with cone-type solenoid activated brakes, enabling operation on at least a seven (7) degree grade. The speeds shall be as follows: Hoist: 30'-35' per minute (except for the first lighter, which will be equipped with hoists having an 18' per minute speed); trolley: 80' per minute; bridge: 70' per minute. The hoist and trolley motions will be controlled by a push button station suspended from the hoist by means of insulated flexible cable, equipped with a suitable arrangement to allow for variation in length. Bridge shall be controlled by means of push buttons mounted on columns adjacent to the hatches.

b. 'Tween Decks. Lodgers for 'tween decks shall be omitted. Inserts, flush with walls and bulkheads, for supporting contemplated decks, shall be installed.

c. Bilge Pump System. Consists of a single 4" header running fore and aft with 3" branches to all holds and voids. Each section shall be fitted with a valve operated from the main deck. Deck fittings shall include an indicator nut and shall be flush with the deck. A motor-driven centrifugal pump, having a capacity of 250 g.p.m. at a 30' head, together with a motor-driven vacuum pump of approximately 12 cu. ft. per minute at 15" shall be installed at the forward end of the vessel.

d. Ventilation. Consists of mechanically ventilating the galley quarters, crews quarters, engine room and pump room. Not less than two (2) electric-driven blowers shall be provided for the system having a total capacity of not less than 10,000 cu. ft. per minute. In addition, two (2) 2000 cu. ft. per minute portable blowers with canvas ducts shall be provided to enable changing of air where necessary.

e. Fire Fighting System. Consists of a single header running fore and aft on the under side of the deck house, with four (4) single outlets therein, one (1) in the crews quarters, one (1) aft, one (1) at the forecastle deck, and one (1) on the roof of the deck house. Each outlet shall be provided with a 50' - 1-1/2" canvas hose, complete with nozzles and racks. A 20 H.P. motor-driven, self-priming, salt water pump, having a capacity of 240 g.p.m. at 60 pounds pressure shall be connected to the header.



f. Electric System. Consists of two (2) 20 KW 250 volt, 3 phase alternating current, Palmer patented, diesel-driven generators. A 1500 gallon capacity fuel oil tank, with one (1) 100 gallon capacity day tank shall be provided. The Generators shall be capable of being paralleled through a switchboard by means of circuit breakers, and set of synchronizing lamps. Transformers shall be provided to supply [142] 120V single phase lighting current. Cooling system for the diesel engines shall consist of a heat exchanger circulating salt water, provided with a salt water pump, and will include a fresh water surge tank.

g. Lighting System. Consists of lines running fore and aft, one on each side of the ship and one along the center, from which approximately thirty (30) 75 watt lights with fixtures will be evenly distributed from the under side of the deckhouse, together with twelve (12) plug-ins installed at convenient locations. All cargo holds shall have two (2) plug-ins and two (2) fixed lights. Twelve (12) 150 watt flood lights with 30 feet of flexible cord for use on the deck and in the holds shall be provided, together with eight (8) 250 watt portable flood lights with 50 feet of flexible cord suitable for brocket mounting over the deckhouse doors, to facilitate loading and discharging.

h. Crews Quarters, Galley, Store and Engine Rooms. The general arrangement of the quarters, galley, store and engine rooms shall be in accordance with Concrete Ship

Constructors' plan #PD-1o-HZ-62A, dated 2 January 1944. A motor-driven pump shall be provided for the salt water system.

i. Refrigerator. One (1) 150 cu. ft. capacity, electric-driven refrigerator shall be provided.

j. Fresh Water: Two (2) 150 gallon capacity tanks and one (1) 1500 gallon water tank shall be provided to supply fresh water to the galley.

k. Windlasses. Two (2) windlasses, driven by 15 H.P. direct connected electric motors, shall be provided, similar to size No. 3 as shown on page 36, American Engineering Catalog No. M-41, except altered to fit electric drive.

l. Capstan. Consists of 15 H.P. motor-driven unit similar to Model E, as shown on page 48 of American Engineering Catalog No. M-41, except that the minimum diameter of the barrel shall be 14" instead of 11-3/4".

m. Deckhouse. The deckhouse shall be raised one (1) foot from the original approved height in order to provide necessary clearance to install monorail equipment.

n. Spares. Consist of parts for all of the mechanical equipment, sufficient in quantity for one (1) year continuous service, in accordance with the manufacturer's recommendations. [143]

Addendum No. 2

Contract No. MCc-20984

This Agreement, made and entered into as of the 10th day of October, 1944, by and between the United States Maritime Commission (herein called the "Commission") and Tavares Construction Company, Inc., a corporation organized and existing under the laws of the State of California, Lloyd S. Stroud and R. S. Seabrook, individually and as a partnership of Stroud and Seabrook, and C. M. Elliott, Carlos Tavares, Henry M. Page, and Don F. Gates, said corporation and persons being joint venturers doing business under the name of Concrete Ship Constructors (herein called the "Contractor");

Witnesseth:

1. Whereas, under date of October 26, 1943, the Commission and the Contractor entered into a contract (herein called the "Vessel Contract") for the construction by the Contractor for the Commission of certain concrete barges (herein called the "Barges");

2. Whereas, the Commission has heretofore instructed the Contractor to complete three of the Barges (designated Contractor's Hull Nos. 45-47, inclusive, herein called the "Converted Barges") as refrigerated lighters;

3. Whereas, by letter agreement dated April 13, 1944, between the Commission and the Contractor, the contract price stated in Article 1 of the Vessel Contract was amended solely for the purpose of making payments to the Contractor under the provisions of Article 11 of the Vessel Contract on account of the additional costs incurred by it in connection with the Converted Barges;

4. Whereas, the Contractor has now submitted a detailed cost estimate for completing the Converted Barges and has requested the Commission to increase the contract price accordingly.

Now, Therefore, it is agreed by and between the parties hereto as follows:

Article I. The contract price stated in Article 1 of the Vessel Contract is hereby amended so that it shall read "\$11,949,765", such increase in contract price being made to provide for the additional costs incurred and to be [144] incurred by the Contractor in connection with converting the Converted Barges to refrigerated lighters, it being understood that the cost of other authorized changes has not been included in the aforesaid increase in contract price.

Article II. Except as hereinbefore otherwise specifically provided, all of the terms and conditions of the Vessel Contract shall remain in full force and effect.

In Witness Whereof, the parties hereto have executed this agreement as of the day and year first above written.  
(Seal)

UNITED STATES MARITIME COMMISSION

By: E. S. LAND

Chairman

Attest:

JOHN R. TANKARD

Acting Assistant Secretary

(Seal)

CONCRETE SHIP CONSTRUCTORS  
TAVARES CONSTRUCTION COMPANY, INC.

By: CARLOS TAVARES  
President

Attest:

DON F. GATES  
Secretary

STROUD AND SEABROOK

By: LLOYD S. STROUD  
Lloyd S. Stroud

(Individually and as a partner)

By: R. S. SEABROOK  
R. S. Seabrook

(Individually and as a partner)

C. M. ELLIOTT

C. M. Elliott

CARLOS TAVARES

Carlos Tavares

HENRY M. PAGE

Henry M. Page

DON F. GATES

Don F. Gates

Approved as to form:

WALSTON S. BROWN

Asst. General Counsel

U. S. Maritime Commission [145]



EXHIBIT 5

Contract No. MCc-7913

This Agreement, entered into this 30th day of June, 1942, by and between the United States Maritime Commission (hereinafter called the "Commission") and Tavares Construction Company, Inc., a corporation organized and existing under the laws of the State of California, Lloyd S. Stroud and R. S. Seabrook, individually and as the partnership of Stroud and Seabrook, and C. M. Elliott, said corporations and persons being joint venturers doing business under the name of Concrete Ship Constructors and being hereinafter referred to as the "Contractor":

Whereas:

1. Under the provisions of Public Law 247 (77th Congress) approved August 25, 1941, the Commission is authorized to construct in the United States, merchant vessels of such type, size and speed as it may determine to be useful for carrying on the commerce of the United States and suitable for the conversion into naval or military auxiliaries and to produce and procure parts, equipment, material and supplies for such vessels, without advertising or competitive bidding;

2. The Commission has determined that the vessel hereinafter described is of a type, size and speed which will be useful for carrying on the commerce of the United States and suitable for conversion into naval or military auxiliaries, and desires the contractor to construct said vessel;

3. The aforementioned individuals, partnership and corporation warrant and represent that they are, and each of them is, authorized and has full power to undertake the obligations hereinafter set forth, and that the stockholders and directors of said corporation have taken all action required by law and by its Certificate of Incorporation and by-laws to authorize its officers to execute, acknowledge and deliver this contract; and

4. The Contractor is willing to construct the vessel hereinafter described upon the terms and conditions and for the consideration hereinafter set forth;

Now Therefore, the parties hereto agree as follows:

Article 1. General Statement of Work.

(a) The Contractor will furnish all labor, material, supplies and equipment and will perform all work necessary to construct, build and deliver, and will construct, build and deliver at his own risk and expense seventeen concrete barges (herein called the "Vessels") in strict accordance with the plans and specifications referred to in Article 3 hereof, and will do everything required of the Contractor by this contract and the plans and specifications, including the installation of any outfitting or equipment furnished by the Commission, all for the consideration hereinafter stated.

(b) The Vessels shall be constructed at the Contractor's shipyard to be located at National City, California (herein called the "Shipyard") and each Vessel when completed, and after passing the tests prescribed in the specifications in a manner satisfactory to the Commission shall be delivered to the Commission alongside of a safe and accessible pier at or near the Shipyard where

there shall be sufficient water for the Vessels always to be afloat, custom to the contrary notwithstanding, free and clear of all liens and claims of every nature or at such other place as may be mutually agreed upon.

Article 2. Additional Facilities. The Contractor hereby agrees to acquire, within the shortest possible time, such shipyard facilities as in addition to those heretofore acquired by the Contractor are necessary for the performance of the work under this contract and for such purpose will [146] enter into an agreement satisfactory in form and substance to the Commission with Defense Plant Corporation for the financing of the cost of such additional facilities. In addition to the payments provided for in Article 2 of the contract between the Contractor and the Commission dated November 27, 1941 (Contract No. MCc-1879) and those provided for in Article 15 hereof, the Commission will reimburse the Contractor for any and all rental payments made during the term of this contract to Defense Plant Corporation pursuant to the aforementioned agreement to be made by the Contractor with such corporation, but in no event shall the obligation of the Commission to make payments hereunder exceed the sum of \$77,260 per Vessel delivered under the terms of this contract.

Article 3. Plans and Specifications; Interpretation and Changes.

(a) The drawings or plans, and specifications (herein called the "plans and specifications") designated "United States Maritime Commission Plans and Specifications dated November 13, 1941" for the construction of the Vessels have, at or before the execution of this contract,

been identified by the signatures of the parties hereto and are hereby made a part hereof with the same force and effect as though herein set out in full.

(b) If any discrepancy, difference, or conflict exists between the provisions of this agreement and the plans and specifications, then, to the extent of such discrepancy, difference or conflict only, the plans and specifications shall be ineffectual and the provisions hereof shall prevail; but in all other respects the plans and specifications shall be in full force and effect. Any question whether the plans and specifications are in conflict with the provisions of this instrument and any conflict or discrepancy between the plans and specifications themselves shall be brought to the attention of the Commission; in such cases specific directions will be given in writing by the Commission to the Contractor and compliance by the Contractor with such directions shall be obligatory.

(c) The Contractor shall not (except as provided in subsection (b)) depart from the requirements of the plans or specifications without prior written approval of the Commission. The Contractor shall, in making application to the Commission for changes in the plans or specifications, set forth clearly the reasons for or the advantages of such changes. The right is reserved, however, by the Commission to make any deductions from, additions to, or further developments of the plans and specifications within the general scope thereof.

Article 4. Contract Price. The contract price of all the Vessels shall be the sum of \$11,781,000 (based on \$693,000 per Vessel) together with such additions and subject to such deductions as are hereinafter provided.

Article 5. Adjustments of Price for Change in Plans and Specifications. Within 10 days (or such longer period as the Commission may allow) after receipt of direction from the Commission to make changes in the plans or specifications of any of the Vessels, or of approval by the Commission of changes requested by the Contractor, the Contractor will furnish to the Commission in writing a statement of its estimate of the net increase or net decrease in cost to result from such change. The Commission (or a Board or Committee designated by it to act in its behalf) shall consider the statement so submitted by the Contractor and on the basis thereof and of such other material as it may deem relevant shall determine and furnish to the Contractor the amount of any such net increase or net decrease in cost. In the event of a net increase, the amount thereof plus 10 per cent shall be added to the contract price. In the event of a net decrease, the amount thereof shall be deducted from the contract price. [147]

Article 6. Adjustments in Contract Price.

(a) The contract price of the Vessels to be constructed and delivered hereunder as stated in Article 4, as adjusted from time to time, is subject to increase or decrease for increased or decreased labor and material cost determined as follows:

1. Labor.

A. The portion of the contract price represented by labor is accepted (for the purposes of this Article only) as \$3,354,300, divided into labor cost quotas for each month of the construction period as follows:



<u>Months After July 1, 1942</u>	<u>Per Cent Increment</u>	<u>Amount</u>
1	1.5	\$ 53,014
2	2.5	88,358
3	4.4	155,509
4	6.8	240,332
5	10.0	353,430
6	11.9	420,582
7	11.8	417,047
8	10.9	385,239
9	10.2	360,499
10	9.0	318,087
11	7.2	254,470
12	5.9	208,524
13	4.1	144,906
14	2.7	95,426
15	1.0	35,343
16	0.1	3,534

B. The Commission will obtain from the United States Department of Labor, Bureau of Statistics, the average hourly earnings in the Durable Goods Group of Manufacturing Industries for the month of May, 1942. The Commission will similarly obtain such average hourly earnings for each subsequent month of the contract period. The Commission shall determine to the nearest 1/10th of 1 per cent the percentage, if any, by which such average hourly earnings for the monthly period are greater or less than the average hourly earnings for the month of

May, 1942. The percentage of increase or decrease so determined will be applied to the quota above stated for such monthly period, and the contract price will be correspondingly increased or decreased.

## 2. Materials.

A. The portion of the contract price represented by material is accepted (for the purposes of this Article only) as \$5,301,450, divided into material cost quotas for each quarterly period of the construction of such Vessels as follows:

<u>Quarters After</u> <u>July 1, 1942</u>	<u>Per Cent</u> <u>Increment</u>	<u>Amount</u>
1st (3 months)	19.9	\$1,054,989
2nd (3 months)	32.2	1,707,067
3rd (3 months)	26.6	1,410,186
4th (3 months)	15.6	827,026
5th (3 months)	5.6	296,881
6th (5 days)	0.1	5,301 [148]

B. The Commission will obtain from the United States Department of Labor, Bureau of Statistics, the index number of wholesale prices for Group VII, building materials, for the month of May, 1942. The Commission will similarly obtain such index number for each subsequent month of the contract period. The average of the index numbers so obtained for the months in-

cluded in each quarterly period shall be taken as the index number for such period. The Commission shall determine to the nearest 1/10th of 1 per cent the percentage, if any, by which such average index number for the quarterly period is greater or less than the index number for the month of May, 1942. The percentage of increase or decrease so determined will be applied to the stated quota for the quarterly period, and the contract price will be increased or decreased by the resulting amount.

(b) In the event that during the progress of the work hereunder the Commission shall determine that the quotas set forth above do not adequately reflect the relative percentage of labor and material expenditures made by the Contractor during the quota months or quota periods of the construction of the Vessels, adjustments will be made in such quotas. The quotas of labor and materials will not be altered on account of delays in the completion of the Vessels unless extension in contract time is authorized by the Commission, in which case revised quotas as determined by the Commission will be used.

(c) The Commission reserves the right to substitute for the method of adjustment set forth in paragraph (a) any other method satisfactory to the Contractor should it at anytime in the judgment of the Commission appear that the specified methods do not reflect equitably the increase in cost of material and labor under the contract.

(d) The contract price as adjusted under Article 5 and paragraph (a) of this Article shall be subject to further adjustment as follows:

(1) In the event that the amounts which have been properly paid or which are payable to the Contractor under the provisions of paragraphs (a) and (c) of Article 15 shall exceed the contract price stated in Article 4 as adjusted under the provisions of Article 5 and paragraph (a) of this Article, the contract price shall be further adjusted so that it shall equal said amounts paid or payable to the Contractor under the provisions of said paragraphs (a) and (c) as determined by audit.

(2) In the event that the contract price stated in Article 4 as adjusted under the provisions of Article 5 and paragraph (a) of this Article shall exceed the amounts which have been properly paid or are then payable to the Contractor under paragraphs (a) and (c) of Article 15, the contract price shall be decreased by such amount as will cause it to equal said amounts paid or payable under said paragraphs (a) and (c) of said Article 15 plus those payable under paragraph (d) of such Article.

Article 7. Delivery Dates. The work under this contract shall be commenced within five days of the date hereof, and each of the Vessels shall be completed in accordance with the following schedule: [149]

<u>Commission's Hull Numbers</u>	<u>Contractor's Hull Numbers</u>	<u>Delivery Dates</u>
1220	6	December 25, 1942
1221	7	January 20, 1943
1222	8	February 5, 1943
1223	9	February 20, 1943
1224	10	March 5, 1943
1225	11	April 5, 1943
1226	12	April 15, 1943
1227	13	May 5, 1943
1228	14	May 15, 1943
1229	15	June 10, 1943
1230	16	June 25, 1943
1231	17	July 10, 1943
1232	18	July 25, 1943
1233	19	August 20, 1943
1234	20	September 5, 1943
1235	21	September 20, 1943
1236	22	October 5, 1943

Article 8. Extension of Time for Completion.

(a) Within 10 days after receipt or direction from the Commission to make changes in the plans and specifications, or approval by the Commission of changes requested by the Contractor, the Contractor will furnish to the Commission in writing a statement of its estimate of the probable resulting change in the time for completion of the work on any Vessel or Vessels affected by such change. The Commission (or a board or committee designated by it to act in its behalf) shall consider the statement so submitted by the Contractor and on the basis thereof and of such other material as it may deem rele-



vant, shall furnish to the Contractor an estimate of such resulting change, and the date for the completion of the Vessels affected shall be correspondingly changed. If it is later established to the satisfaction of the Contractor and the Commission that the actual change in time resulting from such changes varies from such estimate, the change shall be adjusted.

(b) In case of any delay caused by the Commission or any other agency or instrumentality of the United States, or in case of the occurrence of any cause of delay beyond the reasonable control of the Contractor, including without limitation, non-delivery or late delivery of materials and equipment (but only if the Contractor has ordered such material and equipment at proper times and used every reasonable effort to obtain delivery thereof at the times required), Government priorities, acts of God (other than ordinary storms or inclement weather conditions), earthquakes, lightning, floods or fire, strikes, riots, insurrections or war, or delays of subcontractors due to such enumerated causes, written notice thereof and the anticipated results thereof shall be given promptly by the Contractor to the Commission. Within 20 days after such cause of delay has ceased to exist, the Contractor shall file with the Commission a statement of the actual delay resulting from such cause. The Commission (or a Board or Committee designated by it to act in its behalf) shall determine the duration of such delay, and the time for completion of the Vessel or Vessels, the delivery of which has been delayed thereby, shall be correspondingly extended.

(c) Without prejudice to the Contractor's rights, the determination of any and all claims for change in the time for completion of any Vessel shall, at the request

of either the Commission or the Contractor, be postponed until the completion of such Vessel. [150]

Article 9. Liquidated Damages or Bonuses for Early or Late Completion. In case the Contractor shall fail to complete and deliver any Vessel within the time herein prescribed (as extended under the provisions of the preceding Article) there shall be deducted as liquidated damages from the amount payable to the Contractor under the provisions of paragraph (d) of Article 15 hereof the sum of \$50.00 for each calendar day or part thereof during which the delivery of each Vessel is so delayed. In the event that the Contractor shall, however, complete any Vessel prior to the time prescribed for such completion, there shall be paid as bonus to the Contractor, in addition to the other payments specified in this contract, the sum of \$50.00 for each calendar day elapsing from the date on which the Vessel is actually delivered to the date prescribed for such delivery. The total amount of liquidated damages payable hereunder shall be limited to the amount which would otherwise be payable to the Contractor under the provisions of paragraph (d) of Article 15, and bonus payments shall be subject to the limitations set forth in said paragraph (d).

Article 10. Contractor to Receive and Care for Items Furnished by Commission. The Contractor shall receive, inspect, check as to agreement with bill of lading, store, insure, protect, and install aboard the Vessels prior to delivery, all or any of the items required by the specifications or otherwise to be furnished by the Commission.

Article 11. Materials and Workmanship—Domestic Preference. In the performance of the work covered by

this contract the Contractor, subcontractors, material men, or suppliers shall use only such unmanufactured articles, materials, and supplies, as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States; the foregoing provision shall not apply to such articles, materials, or supplies of the Class or kind to be used or such articles, materials, or supplies from which they are manufactured as are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or to such articles, materials, or supplies as may be excepted by the head of the Department under the proviso of Title III, Section 3, of the Act of Congress approved March 3, 1933 (41 U. S. C. 10).

#### Article 12. Inspection—Approval of Plans.

(a) All material and workmanship shall be subject to inspection, by inspectors of the Commission or such other representatives as the Commission may designate at any and all proper times during manufacture or construction at any and all places where such manufacture or construction is carried on.

(b) The Contractor shall furnish promptly all reasonable facilities and materials, including suitably furnished offices with light, heat, telephone, desks, drawing tables, and filing cabinets, necessary for safe and convenient inspection and any test that may be required by the inspectors.

(c) Working plans shall be submitted to the Commission in accordance with such procedure as it may prescribe and blueprints of such plans shall be furnished when required by the Commission. The Commission shall promptly pass on all plans and requisitions submitted for action.

(d) The Commission shall promptly pass all work and material conforming to the requirements of this contract, and shall promptly reject all work and material not conforming to the requirements of this contract. Rejected workmanship shall be satisfactorily corrected, and rejected material shall be satisfactorily replaced with proper material, and the Contractor [151] shall promptly segregate and remove the rejected material.

(e) All inspection and tests by the Commission shall be performed in such manner as not to unnecessarily delay the work. The Contractor shall be charged with any additional costs of inspection when material and workmanship are not ready at the time inspection is requested by the Contractor.

(f) Any dispute between the Contractor and any representative of the Commission under this Article, shall be referred promptly to the Commission, and the decision of the Commission thereon shall be final and conclusive.

(g) The provisions of this Article are subject to the provisions of this contract relative to the trials and acceptance of the Vessels.

Article 13. Tests and Acceptance. When each barge is completed and after the Commission has made such tests thereon as it may prescribe, such barge, if it meets with the requirements of the plans and specifications and

this contract, will be accepted by the Commission subject to the provisions of Article 14.

Article 14. Guarantee Period. If at any time within 6 months after the acceptance of each Vessel any weakness, deficiency, defect, failure, breaking down or deterioration in such Vessel, including her machinery, appurtenances, and equipment, other than that due to wear and tear, or the negligence of other improper act or omission of the Commission or other operator thereof shall appear, the Contractor will be required to make good, at its expense, any such defects to the satisfaction of the Commission. Any such work required to be done is to be carried out at a port agreeable to the Commission. In computing said period of 6 months from date of acceptance, the time, if any, but only such time, during which the Vessel is not available for service on account of any weakness, deficiency, defect, failure, breaking down or deterioration of the Vessel for which the Contractor is responsible, shall be excluded.

The Contractor shall be informed of all defects and deficiencies discovered during said guarantee period for which it is held responsible, and, whenever practicable, shall be given an opportunity to inspect the same before the defects and deficiencies are remedied, and the decision of the Commission as to the responsibility of the Contractor for such defects and deficiencies shall be final and binding on the parties to this contract.

No payments made under the provisions of this Article shall be included in the cost of the Vessels for the purpose of making payments under the provisions of Article 15 hereof or otherwise. The total liability of the Contractor under this Article shall be limited as to each Vessel to



be constructed hereunder to the amount of payments which are payable or which have been paid to the Contractor on account of said Vessel under the provisions of paragraph (c) of Article 15, and, in addition, as to all Vessels to be constructed hereunder, to the amount of payments which are payable or which have been paid to the Contractor under the provisions of paragraph (d) of Article 15.

Article 15. Payment of Contract Price.

(a) Partial payments on account of the contract price shall be made during the progress of the work hereunder to the Contractor by the Commission at semi-monthly or such other intervals as the parties may mutually agree upon. Such partial payments shall be based upon that portion of the value of the work done and materials on hand which is represented by the cost thereof (inclusive of overhead), and the Contractor shall accompany each voucher for such partial payment with a statement in form satisfactory [152] to the Commission setting forth such cost. Any payment made on the basis of such voucher shall be subject to adjustment upon final audit by the Commission. The Commission may, upon such terms and conditions as it may prescribe, include, as part of the value of work and materials, work performed by any subcontractor or materials, machinery or equipment to be installed in the Vessels, although not yet delivered, if title to such materials, machinery or equipment shall have vested in the Commission.

(b) No payments shall be made except on bills, vouchers, or invoices in such number and form and executed and attested in such manner and supported by such evidence as shall be prescribed by the Commission. All

warrants for payments hereunder shall be made payable to the Contractor or order.

(c) Upon launching of each Vessel, there shall be paid to the Contractor, in addition to the payments provided for in paragraph (a) hereof, the sum of \$9,450, and upon delivery thereof the sum of \$9,450.

(d) In the event that the payments made under paragraphs (a) and (c) hereof shall, upon completion and delivery of all the Vessels and a final audit under this contract, be found to be less than the contract price stated in Article 4 and adjusted under the provisions of Article 5 and paragraph (a) of Article 6, the Commission shall pay to the Contractor an amount equal to (i) 50 percent of the sum by which the contract price, adjusted as aforesaid, exceeds the amount paid under the provisions of paragraphs (a) and (c), less (ii) any liquidated damages payable under Article 9 hereof, plus (iii) any bonuses payable under said Article 9; Provided, that in no event shall the total amount payable under the provisions of this paragraph (including bonuses payable under the provisions of Article 9 hereof) exceed the sum of \$749,700.

(e) The payments specified in the preceding paragraphs of this Article shall constitute full consideration to the Contractor for all the work to be performed under the provisions of this contract.

#### Article 16. Determination of Cost.

(a) For the purposes of making payments under Article 15 hereof the term "cost" as therein used shall include all amounts which the Commission determines are chargeable directly to the construction, outfitting and

equipping of the Vessels or to constitute items of overhead expense which are not directly chargeable thereto but are incident and necessary for the work of constructing, outfitting and equipping the Vessels. Such cost shall be determined by the Commission in accordance with the applicable provisions of its "Regulations Prescribing the Method for Determining Profit, Adopted May 4, 1939", it being understood and agreed that there shall be included in such costs overhead and depreciation on any equipment or plant furnished by the Contractor for use in connection with the work hereunder and the cost of expendable tools and supplies consumed in accordance with and to the extent permitted by the provisions of said Regulations.

(b) In determining cost for the purpose of Article 15 hereof the Commission will exclude therefrom (1) any expense, including (without limitation) traveling expense, deemed by the Commission to be excessive, (2) the cost of remedying work and replacing materials which are defective because of the failure of the Contractor to use reasonable diligence and the cost of performing any work required under the provisions of Article 14 hereof, (3) rental payments made by the Contractor to Defense Plant Corporation, (4) the exclusions required under paragraph 7.23 of said "Regulations Prescribing the Method of Determining Profit, Adopted May 4, 1939" as amended, (5) costs incurred by the Contractor in contravention of the provisions of [153] this contract including those of Article 17, and (6) contributions to charities, community or other organizations.

(c) All costs shall be scrutinized by the Commission to determine that they are fair, just and not in excess of the market price for the materials and services for which they are incurred.

(d) Statement returns relative to expenditures shall be made as and when directed by the Commission, and all books, files and other records in respect thereto shall at all times be open for inspection by representatives of the Commission.

Article 17.     Purchases, Subcontracts and Wage Rates.

(a) Wherever practicable, the Contractor shall obtain from responsible firms and individuals competitive bids for the material, equipment and services required in connection with the performance of the work under this contract and shall award orders therefor to the lowest satisfactory bidder. Where, however, such procedure is not practicable or expedient, contracts may be made and orders awarded upon the basis of market or negotiated prices. No order shall, however, be placed or subcontract made which calls for the performance of services or the delivery of materials, equipment and machinery at a price in excess of \$10,000 per Vessel without the prior approval of the Commission or its authorized representative.

(b) Subject to applicable laws and regulations of any agency of the United States issued pursuant to such laws, the rate of wages paid by the Contractor for work performed under this contract shall not, without the consent of the Commission, be in excess of those established by any stabilization or other conference held under the auspices of the National Defense Advisory Commission or other agency of the United States for the region in which the Shipyard is located, or in the event that rates have not been established for such region, in excess of those which may be approved from time to time by the Commission.

Article 18. Title. The title to all materials, equipment, supplies, and all other property assembled at the Shipyard or elsewhere for the purpose of being used for the construction of the Vessels, as well as title to the Vessels themselves, on account of which payments are made shall immediately be vested in the Commission: Provided, however, that nothing herein contained shall be construed as a waiver by the Commission of its right to require the Contractor to replace, at Contractor's expense, unsatisfactory workmanship or materials as herein provided: Provided further, that the Contractor shall have an equity in any such material, equipment, supplies, and other property to the extent that it may not have been fully paid for by the Commission.

Article 19. Taxes. The Contractor shall pay all United States, State, County, and City or other taxes, assessments or duties lawfully assessed against the Vessels, materials, supplies or equipment to be used under this contract prior to delivery thereof to the Commission.

Article 20. Liens.

(a) When payment is to be made under this contract, as a condition precedent thereto, the Commission may, in its discretion, require that evidence satisfactory to it, to be furnished by the Contractor showing what, if any, liens or rights in rem of any kind against the Vessels, or their machinery, fittings, or equipment, or the materials on hand for use in the construction thereof, have been or can be acquired for or on account of any work done, or any machinery, fittings, equipment, or material already [154] incorporated as a part of said Vessels, or on hand for that purpose; but it is hereby further stipulated,



covenanted, and agreed by the Contractor, for itself and on its own account and for and on account of all persons, firms, associations, and corporations furnishing labor and material for the Vessels, and this contract is upon the express condition that no liens or rights in rem of any kind shall lie or attach upon or against the Vessels or their machinery, fittings, or equipment, or the materials therefor, or any part thereof, or of either, for or on account of any work done upon or about said Vessels, machinery, fittings, equipment, or materials, or of any materials furnished therefor or in connection therewith, nor for or on account of any other cause, or thing, or of any claims or demands of any kind, except the claims of the Commission.

(b) If a lien or encumbrance arising out of the work to be performed hereunder is filed against the Vessels, or any of them, or against any materials, equipment, supplies or other property intended therefor, the Contractor shall forthwith notify the Commission thereof, and the Commission, subject to the provisions of this Article, may satisfy the same and withhold the amount thereof, together with any expenses incurred in connection therewith from the amount of any payment or payments which may then be due or which may thereafter become due to the Contractor. If the amount of any such payments is insufficient to permit the deduction of the entire cost and expense so incurred by the Commission, the Contractor shall, nevertheless, be liable to the Commission for the deficiency and will pay the same to the Commission on demand. In the event the Commission does not satisfy any such lien or encumbrance, it may, nevertheless, with-

hold the amount thereof, as provided above, unless and until such lien or encumbrance is satisfied by the Contractor.

(c) If a lien or encumbrance arising out of the work to be performed hereunder is filed against the Vessels, or any of them, or the materials, equipment, supplies, or other property intended therefor, the Contractor shall within 15 days thereafter, cause the Vessel or Vessels, materials, equipment, supplies or other property to be released and any lien on them or any of them to be discharged; nothing contained herein, however, shall be construed as preventing the Contractor from contesting any such lien or encumbrance or the debt to which it may relate, but in the event of any such contest it shall be the duty of the Contractor within the time named to procure by court order a release of the property from the lien or encumbrance by the filing of a bond, or otherwise, if any such remedy is available under the law; and in the event it is not, the Contractor shall then immediately take such steps as in the opinion of the Commission shall prevent such lien or encumbrance from delaying the work, and shall indemnify and save harmless the Commission from all costs, charges, and damages incurred, or possible of being incurred, by reason of such contest or in any way attributable thereto.

Article 21. Insurance on Vessels and Materials. Until each Vessel has been completed, physically delivered, and accepted by the Commission, such Vessel and all materials, outfitting, equipment, and appliances to be installed in the Vessels including all materials, outfitting, equipment and appliances provided by the Commission for and used or to be used in the construction thereof shall be

kept fully insured under Builder's Risk form of policies or other usual forms of insurance including loss or damage caused by strikers, locked out workmen, and/or persons taking part in labor disturbances, and/or riot or civil commotion and/or malicious damage and/or sabotage and/or vandalism and such other forms of insurance as the Commission may require in an amount at no time less than the aggregate of amounts paid or payable to the Contractor by the Commission under this agreement plus the value of any materials, outfitting, equipment, and appliances furnished by the Commission. The amount of insurance, the terms of the policies, and the insurance companies, underwriters, or underwriting funds shall [155] at all times be satisfactory to the Commission. All policies of insurance shall be taken out in the name of the Contractor for account of Whom It May Concern, and losses under such policies shall be made payable to the Commission for distribution by it to the Commission, or the Contractor as their respective interests may appear. All cover notes and policies, with all premiums or other charges prepaid, shall be delivered to the Commission for its approval and custody. Policies if not in conformance herewith shall be surrendered and cancelled upon direction of the Commission and new policies procured in conformance herewith.

The Contractor may, in its discretion, and shall, if and as required by the Commission, secure fidelity and other similar bonds, workmen's compensation, public liability, and automobile liability insurance and such other insurance as may be required by the laws of the state in which the Shipyard is located. The Contractor may also obtain other insurance against liabilities of the Contractor to any third person for any cause whatsoever. All insur-

ance required pursuant to instruction of the Commission shall at all times be maintained with companies, underwriters, or underwriting funds, in amounts and under forms of policies, satisfactory to the Commission.

The Contractor shall not be deemed to have warranted the validity or coverage of any such insurance. In the event that any of the insurance required by the Commission hereunder by reason of any act, omission, or negligence of the Contractor shall not be kept in full force and effect, the Contractor shall pay to the Commission all losses and indemnify the Commission against all claims and demands which would otherwise have been covered by such insurance.

Article 22. Injury to Employees. The Contractor shall indemnify and save harmless the United States, the Commission, and any other agency or instrumentality of the United States, and the Vessels, against all claims arising from injury to or death of employees, workmen, trespassers, licensees, and all other persons, whether in, on, or about the work to be performed hereunder or from damage to or loss of property, due to the act, neglect or default of the Contractor or subcontractors or their agents or employees; it being expressly understood that the workmen engaged upon the work on the Vessels to be constructed hereunder shall at all times be employees of the Contractor or subcontractors and not of the Commission.

Article 23. Patent Infringement. The Contractor shall be responsible for any and all claims made against the Commission or the Vessels for infringement of patents or patent rights or for the use of patented articles in connection with the work and material furnished by the Contractor, and shall defend, save harmless, and in-

demnify the United States, the Commission, and every agency or instrumentality of the United States, and the Vessels against all such claims and against all costs, expenses, charges, and damages which the said parties or any of them, may be obliged to pay by reason thereof, including expenses of litigation, if any; provided, however, that upon any such claim being made against said parties or any thereof, the Contractor will be promptly notified of such claim and also of any suit brought in connection therewith and will be given an opportunity to defend the same; and provided, that no payment on account of any such claim shall be made by the said United States, the Commission, or any other agency or instrumentality of the United States, unless either with the consent of the Contractor or pursuant to the decree of a proper court or tribunal.

Article 24. Covenant to Make Prompt Payment. The Contractor covenants that it will have and maintain at all times, sufficient working funds for the carrying out of its obligations hereunder, and will make prompt payment for all labor, materials, services, and other charges which are to be paid under this contract. [156]

Article 25. Labor Laws.

(a) The Contractor shall not employ any person undergoing sentence of imprisonment at hard labor.

(b) The Contractor will report monthly, and will cause all subcontractors to report in like manner, within 5 days after the close of each calendar month on forms to be furnished by the United States Department of Labor, the number of persons on their respective pay rolls, the aggregate amount of such pay rolls, the man-hours worked, and the total expenditures for materials. He shall fur-



nish to the Department of Labor the names and addresses of all subcontractors on the work at the earliest date practicable: Provided, however, That the requirements of this paragraph shall be applicable only for work at the site of the construction project.

(c) The Contractor and subcontractors at the site of the construction project will comply with the provisions of Public Act No. 324, 73d Congress, approved June 13, 1934, (48 Stat. 948) and with the provisions of the regulations issued by the Secretary of Labor thereunder, entitled "Regulations Applicable to Contractors and Subcontractors on Public Building and Public Work and on Building and Work Financed in Whole or in Part by Loans or Grants from the United States", published in the Federal Register March 1, 1941 as amended.

(d) This contract is subject to the provisions of the Act of June 25, 1936, (Public No. 814), entitled "An Act to provide more adequate protection to workmen and laborers on projects, buildings, constructions, improvements, and property wherever situated, belonging to the United States of America, by granting to the several States jurisdiction and authority to apply their State workmen's compensation laws on all property and premises belonging to the United States of America."

(e) The Contractor and its subcontractors shall pay all mechanics and laborers employed on work under this contract and directly upon the site of the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those which may be determined by the Secretary of Labor pursuant to the provisions of the

Act approved March 3, 1931 (46 Stat. 1494) to be the prevailing rates for the various classes of such laborers and mechanics; and the scale of wages to be paid shall be posted by the Contractor in a prominent and easily accessible place at the site of the work. The Commission shall have the right to withhold from the Contractor and subcontractors so much of accrued payments as may be considered necessary by the Commission to pay to laborers and mechanics employed by the Contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by such laborers and mechanics and not refunded to the Contractor, subcontractors or their agents. The Commission will furnish the Contractor with the wage scale determined by the Secretary of Labor as aforesaid, and until such wage scale is so furnished, the Contractor shall be under no obligations under the provisions of this paragraph.

Article 26. Eight-Hour Law. Until otherwise provided by law, provisions of law prohibiting more than 8 hours of labor in any one day of persons engaged upon work covered by this contract shall, in accordance with the provisions of the Act approved October 10, 1940 (Public No. 831, 76th Cong.), be suspended. The provisions of said Act approved October 10, 1940 are applicable to this contract.

Article 27. Prohibition against Employment of Certain Persons and against Discrimination. The Contractor shall not employ any person who [157] advocates, or who is a member of an organization that advocates, the overthrow of the Government of the United States by force

or violence to perform any part of the work under this contract, and as a condition to the employment of any person for the performance of such work, the Contractor shall, if the Commission so directs, require such person to execute and to file an affidavit in such form as to satisfy the requirements of Section 4 of Public Law No. 23 (77th Congress), approved March 27, 1941, but the execution and filing of such affidavit shall be without prejudice to the right of the Commission to require such further evidence in the premises as it may deem desirable. The Contractor agrees that in the performance of the work under this contract, it will not discriminate against any worker because of race, creed, color or national origin. (Executive Order No. 8802, approved June 25, 1941.)

Article 28. Fees. The Contractor warrants that he has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or fee, contingent or otherwise. Breach of this warranty shall give the Commission the right to terminate the contract, or, in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or fee. This warranty shall not apply to commissions payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

Article 29. Officials not to Benefit. No member of or delegate to Congress, nor Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, except as provided in Section 116 of the Act approved March 4, 1909, (35 Stats. 1109).

Article 30. Events of Default. The following shall constitute events of default under this contract:

(a) Failure of the Contractor in any respect to use due diligence in proceeding with the performance of the work required under this contract, or failure to perform any of the covenants on its part to be performed hereunder, provided that the Commission in either instance shall give notice to the Contractor as to such failure and Contractor shall not within thirty days after being so notified cure such failure.

(b) The filing by the Contractor or any of the undersigned individuals or the undersigned partnership or corporation of a petition in bankruptcy or for reorganization under the Bankruptcy Act or the entry of an order upon petition against the Contractor or any of the said individuals or said partnership or corporation adjudicating such Contractor, individuals, partnership or corporation or any of them a bankrupt, or the appointment of a receiver or receivers of the Contractor, said individuals, partnership or corporation or any of them or of any property belonging to the Contractor, said individuals, partnership or corporation necessary for the performance of its obligations under this agreement.

Article 31. Termination on Account of Default.

(a) Upon the occurrence of any of the events of default set forth in Article 30 hereof the Commission may terminate this contract and enter upon the Shipyard of the Contractor and take possession thereof as well as of any Vessels either completed or uncompleted and any machinery, materials, fittings, equipment and supplies theretofore or thereafter delivered at the Shipyard to be incorporated in the construction or the equipment of the

Vessels, or to be used in connection therewith, together with all plans, [158] specifications, calculations and other records required for the construction or equipment of the Vessels. In the event of termination pursuant to the provisions of this Article, the Commission may complete, or cause to be completed, all of the work to be performed upon the Vessels hereunder, and for such purpose, may take possession of so much of the Shipyard and the Contractor's plant, equipment, tools, machinery and appliances as may be necessary for the proper conduct of such work, and use and occupy the same without payment of rental or any other charge therefor until all of the work to be performed upon the Vessels has been completed.

In the event that this contract is terminated pursuant to the provisions of this Article, the Contractor shall not be entitled to receive any further payments from the Commission on account of the contract price with the exception of payments which have accrued under the provisions of paragraphs (a) and (c) of Article 15 prior to date of termination.

Articles 32. Optional Cancellation by the Commission.

(a) At any time prior to the completion of the work to be performed hereunder, the Commission may cancel this contract upon written or telegraphic notice to the Contractor, and upon the effective date of such cancellation the Contractor shall stop all work hereunder except as otherwise directed by the Commission. In the event of cancellation under this Article, the Commission shall pay to the Contractor the following amounts:

(1) The cost of work performed and materials, equipment and machinery acquired for use in any



Vessel whether or not completed and delivered other than costs which have been previously paid under the provisions of paragraph (a) of Article 15 of this contract.

(2) An amount equal to 10 percent of the cost of said work, materials, equipment and machinery or 6 percent of the contract price (as adjusted under the provisions of Article 5 and paragraph (a) of Article 6 to date of cancellation) multiplied by the percentage of the completion of the contract work, whichever amount shall be the lesser, less any payments previously made to the Contractor under the provisions of paragraphs (c) and (d) of Article 15 hereof.

(3) An amount equal to the cancellation fees, approved by the Commission, or charges paid by the Contractor in connection with the cancellation of any subcontract or other agreement for materials, machinery or equipment to be used or services to be performed in connection with the construction of the Vessels if the Commission shall have permitted the cancellation of such subcontracts or other agreements.

(4) Any other expenses of the Contractor in connection with the cancellation of this contract which are determined by the Commission to be necessary and reasonable.

(b) If this contract is cancelled pursuant to the provisions of this Article, the Commission shall permit the Contractor to cancel all subcontracts or other agreements theretofore entered into by the Contractor for the mate-

rials, machinery or equipment to be used or services to be performed in connection with the construction of the Vessels except in those cases where the continued performance of such subcontract or other agreements is necessary for the completion of work which the Commission directs the Contractor to perform or where the Commission offers to take over and perform the Contractor's obligations under such subcontracts or other agreements. [159]

Article 33. Loss of or Damage to Vessels. If there shall be an actual loss of any Vessel prior to its delivery to the Commission, or if any Vessel shall be so damaged that in the determination of the Commission work thereon should be abandoned, the Commission may, at its option, either require the Contractor to construct another vessel as a replacement for the Vessel so lost or destroyed or modify this contract so as to relieve the Contractor of its obligation to deliver the Vessel so lost or damaged. In either case, payments made under the provisions of paragraphs (a) and (c) of Article 15 hereof on account of the Vessel so lost or damaged shall be disregarded in determining the amount of payment to which the Contractor is entitled under the provisions of paragraph (d) of said Article 15. In the event that the Commission requires the Contractor to construct a replacement vessel as aforesaid, no adjustment will be made in the contract price on account of such replacement. In the event, however, that the Contractor is, pursuant to the provisions of this Article, relieved of its obligations to deliver any Vessel, the contract price stated in Article 4 shall be reduced by an amount equal to such price divided by the number of Vessels to be constructed hereunder, and the maximum

amount payable under the provisions of paragraph (d) of Article 15 shall be reduced in the same proportion.

Article 34. Arbitration. Notwithstanding any other provisions to the contrary, in any case where this agreement provides that determination by the Commission of a question of fact shall be final or conclusive, the Contractor may, within 10 days after the making of such determination, give notice to the Commission of its appeal therefrom. Questions of fact with respect to which an appeal is so taken shall be referred to arbitrators, the Commission and the Contractor each designating one and the two thus appointed, in case of disagreement, designating a third as umpire. The arbitrators shall give prompt notice to both parties of their determinations of such questions of fact, which shall thereupon supersede the determinations of the Commission and shall be binding upon the Commission and the Contractor.

Article 35. Renegotiation. This contract is subject to the provisions of Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, and the Contractor hereby agrees that (1) the contract price may be renegotiated pursuant to said Section 403 at a period when the profits derived hereunder can be determined with reasonable certainty; (2) any amount of the contract price which is found as a result of such renegotiation to represent excessive profits and an amount of the contract price equal to the amount of reduction in contract price of any subcontract under this contract pursuant to renegotiation of such subcontract as hereafter provided will be repaid to the Commission or may be retained by the United States; and (3) the Contractor will insert in each subcontract for an amount in excess of \$100,000 made

by the Contractor hereunder (i) a provision for renegotiation by the Chairman of the Commission and the subcontractor of the contract price of such subcontract at a period when the profits can be determined with reasonable certainty, (ii) a provision for the retention by the United States or the repayment to the United States of any amount of the contract price which is found as a result of such renegotiation to represent excessive profits, and (iii) a provision for relieving the Contractor from any liability to the subcontractor on account of any amounts so retained by or repaid to the United States.

The liability of the Contractor hereunder to make repayments of any amounts on account of a reduction in any subcontract price under this Article shall be limited to the amount unpaid by the Contractor to the subcontractor under such subcontract plus an amount, if any, equal to payments made to such subcontractor subsequent to the receipt of a notice from said Chairman to retain said payments. [160]

Article 36. Effect of this Contract. Said Tavares Construction Company, Inc. and the partnership of Stroud and Seabrook, as well as the members of such partnership, and C. M. Elliott shall be jointly and severally bound hereunder and all of said individuals and said corporation and said partnership shall be bound by the acts or representations of any one of said individuals, said corporation, said partnership or the members thereof, and payment by the Commission to any one shall constitute payment to all of them. Wherever reference is made herein to the "Contractor" it shall mean said individuals, said partnership, the members of said partnership and said corporation, both as individuals and as joint ventures.

In Witness Whereof, the parties hereto have executed this agreement as of the day and year first above written.  
(Seal)

UNITED STATES MARITIME COMMISSION

By: E. S. LAND

Chairman

Attest:

A. J. WILLIAMS

Asst. Secretary.

(Seal)

TAVARES CONSTRUCTION COMPANY, INC.

By: CARLOS TAVARES

President

Attest:

DON F. GATES

Secretary

STROUD AND SEABROOK

By: LLOYD S. STROUD

Lloyd S. Stroud

(Individually and as a partner)

By: R. S. SEABROOK

R. S. Seabrook

(Individually and as a partner)

C. M. ELLIOTT

Approved as to form:

WADE H. SKINNER

General Counsel

U. S. Maritime Commission [161]



Addendum No. 1

Contract No. MCc-7913

This Agreement, made and entered into as of the 5th day of November, 1942, by and between the United States Maritime Commission (herein called the "Commission") and Tavares Construction Company, Inc., a corporation organized and existing under the laws of the State of California, Lloyd S. Stroud and R. S. Seabrook, individually and as the partnership of Stroud and Seabrook, and C. M. Elliott, said corporations and persons being joint venturers doing business under the name of Concrete Ship Constructors and being hereinafter referred to as the "Contractor";

Whereas:

1. Under date of June 30, 1942 the Contractor and the Commission entered into a contract (herein called the "Vessel Contract") for the construction by the Contractor of seventeen concrete barges in accordance with the terms and conditions of such contract;

2. The Vessel Contract provided that the Contractor would obtain certain shipyard facilities under an agreement with Defense Plant Corporation and that the Commission would reimburse the Contractor for certain payments to be made by the Contractor to Defense Plant Corporation under the terms of said agreement;

3. The Navy Department has acquired the land on which some of the aforementioned additional shipyard facilities were to be constructed, and the Commission has caused eminent domain proceedings to be brought to acquire a new site for such shipyard facilities, as well as the site of certain shipyard facilities heretofore acquired by the Contractor;

4. As a result of the change in the site of the proposed additional shipyard facilities, the cost thereof will be increased with a resulting increase in the Contractor's obligations to Defense Plant Corporation; and

5. The parties to the Vessel Contract desire to amend such contract so as to make certain charges therein necessitated by the aforementioned change in the cost of said additional shipyard facilities. [162]

Now Therefore, in consideration of the premises, the parties hereto agree to amend the Vessel Contract so as to delete the last sentence of Article 2 thereof and substitute in lieu of such sentence a sentence reading as follows:

"In addition to the payments provided for in Article 2 of the contract between the Contractor and the Commission dated November 27, 1941 (Contract No. MCc-1879) and those provided for in Article 15 hereof, the Commission will reimburse the Contractor for any and all rental payments made during the term of this contract to Defense Plant Corporation pursuant to the aforementioned agreement to be made by the Contractor with such corporation, but in no event shall the obligation of the Commission to make payments under this Article exceed the sum of \$94,375 per vessel delivered under the terms of this contract, plus such amount as may subsequently be added thereto under any agreement between the Contractor and Defense Plant Corporation for the sole purpose of reimbursing Defense Plant Corporation for the cost of the site of said shipyard facilities if such costs shall be paid by Defense Plant Corporation to the Commission."

Except as hereinbefore otherwise expressly provided, all the terms and conditions of the Vessel Contract shall remain in full force and effect.

In Witness Whereof, the parties hereto have executed this agreement as of the day and year first above written.

UNITED STATES MARITIME COMMISSION

By: E. S. Land (signed)  
Chairman

Attest:

A. J. Williams (signed)  
Assistant Secretary

TAVARES CONSTRUCTION COMPANY, INC.

By: (signed)  
President

Attest:

Don F. Gates (signed)  
Secretary

STROUD AND SEABROOK

By: Lloyd S. Stroud (signed)  
LLOYD S. STROUD

(Individually and as a partner)

By: R. S. Seabrook (signed)  
R. S. SEABROOK

(Individually and as a partner)

By: C. M. Elliott (signed)  
C. M. ELLIOTT

Approved as to form:

Wade H. Skinner (signed)  
General Counsel

U. S. Maritime Commission [163]

Addendum No. 2

Contract No. MCc-7913

This Agreement, made and entered into as of the 24th day of December, 1942, by and between the United States Maritime Commission (hereinafter called the "Commission") and Tavares Construction Company, Inc., a corporation organized and existing under the laws of the State of California, Lloyd S. Stroud and R. S. Seabrook, individually and as the partnership of Stroud and Seabrook, and C. M. Elliott, said corporations and persons being joint venturers doing business under the name of Concrete Ship Constructors and being hereinafter referred to as the "Contractor";

Whereas:

1. Under date of June 30, 1942 the Commission and the Contractor entered into a contract (herein called the "Vessel Contract") for the construction by the Contractor for the Commission of seventeen concrete barges;

2. Under the terms of such contract the Commission agreed to reimburse the Contractor for certain rental payments to be made in connection with the acquisition by the Contractor through Defense Plant Corporation of certain additional shipyard facilities required in connection with the construction of said barges; and

3. The Contractor has requested the Commission to increase its obligation to make reimbursements for rental

payments and has agreed, in consideration of such increase in said obligation, to reduce certain of the fees payable to it under the Vessel Contract.

Now, Therefore, the parties hereto agree as follows:

Article 1. The Vessel Contract is hereby amended in the following respects:

(1) The figure "\$77,260" appearing in Article 2 thereof shall read "\$127,000".

(2) The figure "\$11,781,000" appearing in Article 4 shall read "\$11,696,000", and the figure "\$693,000" appearing in such Article shall read "\$688,000". [164]

(3) Wherever the figure "\$9,450" appears in paragraph (c) of Article 15 of the Vessel Contract, such figure shall read "\$8,200".

(4) The figure "\$749,700" appearing in paragraph (d) of Article 15 of the Vessel Contract shall read "\$664,700".

Article 2. Except as hereinbefore otherwise expressly provided, all the terms and conditions of the Vessel Contract shall remain in full force and effect.

In Witness Whereof, the parties hereto have executed this agreement as of the day and year first above written.  
(Seal)

UNITED STATES MARITIME COMMISSION

By: E. S. LAND

Chairman



Attest:

A. J. WILLIAMS

Assistant Secretary

(Seal)

TAVARES CONSTRUCTION COMPANY, INC.

By: CARLOS TAVARES

President

Attest:

DON F. GATES

Secretary

STROUD AND SEABROOK

By: LLOYD S. STROUD

Lloyd S. Stroud

(Individually and as a partner)

By: R. S. SEABROOK

R. S. Seabrook

(Individually and as a partner)

By: C. M. ELLIOT

C. M. Elliot

Approved as to form:

WADE H. SKINNER

General Counsel

U. S. Maritime Commission [165]

Contract No. MCc-7913

Addendum No. 4

This Agreement, made and entered into as of the 30th day of September, 1943, by and between the United States Maritime Commission (herein called the "Commission") and Tavares Construction Company, Inc., a corporation organized and existing under the laws of the State of California, Lloyd S. Stroud and R. S. Seabrook, individually and as the partnership of Stroud and Seabrook, and C. M. Elliott, said corporations and persons being joint venturers doing business under the name of Concrete Ship Constructors and being hereinafter referred to as the "Contractor";

Whereas:

1. Under date of June 30, 1942, the Commission and the Contractor entered into a contract (herein called the "Vessel Contract") for the construction of certain vessels by the Contractor for the Commission;

2. Under the terms of the Vessel Contract the Commission agrees to make payments to the Contractor on the basis of the costs incurred by it in the performance of the work thereunder, including the cost of any insurance premiums paid by the Contractor;

3. The Commission desires to assume the risk of loss arising out of certain third party liabilities which may from time to time be incurred by the Contractor during the performance of the contract work; and

4. The parties hereto desire to amend the Vessel Contract to provide for such assumption of risk of loss by the Commission and to make appropriate provisions for adjustment in the contract price on account of the fact

that the Contractor will not have to pay certain insurance premiums.

Now, Therefore, the parties hereto agree to amend Article 21 of the Vessel Contract so that it shall read as follows:

“Article 21. The Contractor may, in its discretion, and shall, if and as required by the Commission, secure fidelity and other similar bonds, workmen’s compensation, public liability, property damage and automobile liability insurance and such other insurance as may be required by the laws of the State in which the Shipyard is located. The Contractor may also obtain other insurance against liabilities of the Contractor to any third person for any cause whatsoever except liabilities adequately covered by insurance provided by the Commission for benefit of itself and the Contractor or as otherwise hereinafter expressly provided. The Contractor shall also secure such other insurance as the Commission may direct or approve.

“The Commission has requested the Contractor not to obtain Protection and Indemnity insurance or other insurance against claims and liabilities for damage to or loss of property of third parties, personal injury to or death of persons (other than employees of the Contractor) occurring in connection with or during the operation or movement of any Vessel away from the Shipyard, and the Contractor shall not, in connection with movement or operation of any Vessel launched subsequent to February 28, 1943, obtain insurance against such liabilities and claims. The Commission hereby agrees, subject to the terms and

conditions of this paragraph, to indemnify and hold the Contractor harmless from liabilities and claims which may occur as a result of damage to or loss of property of third parties, personal injury to or death of persons (other than employees of the Contractor) in connection with the operation or movement of any such Vessel as aforesaid prior to the delivery thereof under this contract irrespective of whether the liability arises from negligence [166] of the Contractor, its agents, servants or employees to the extent such liabilities are not covered by insurance carried by the Contractor. The obligation of the Commission hereunder shall include the payment of reasonable legal and other expenses and court costs arising from a claim or purported claim for damage to or loss of property of third parties, personal injury or death as aforesaid and for the amount of any judgment or settlement made on account of such a claim if the Contractor shall (1) follow such instructions as the Commission may from time to time issue in respect to the handling of such claims and actions and the employment of counsel in connection therewith, (2) permit the Commission to defend any action which may be brought in its own name or in that of the Contractor and (3) not make any settlement of any such claim without the prior approval of the Commission or its duly authorized representative.

"The term 'vessel property' shall include (i) all undelivered Vessels and delivered Vessels on which work is being performed under an agreement between the parties hereto dated February 18, 1943, whether completed or uncompleted, and all materials,

machinery, equipment and other items of personal property to be used for or in connection with the construction of the Vessels, title to which is in the Commission or the United States, represented by the Commission, (ii) all machinery, equipment or other items of personal property delivered to the Contractor for installation on the vessels, title to which is in the United States, represented by the Navy Department, or any other agency or instrumentality of the United States, and (iii) all machinery, equipment and materials the cost of which has been or will be paid to the Contractor under the terms of this contract and delivery of which has been made to the Contractor either at the site of the performance of the contract work or elsewhere. The Commission has requested the Contractor not to carry or to incur the expense of any insurance against any risk of loss of or damage to any vessel property unless the Commission shall in writing direct the Contractor to insure such property and then only to the extent and in the manner directed. The Commission accordingly assumes all risk of loss of or damage to the vessel property to the extent that such risk of loss has not been covered by insurance pursuant to written direction of the Commission and shall not hold the Contractor liable for any such loss of or damage to such property, irrespective of the cause of the risk thereof and whether or not caused by the negligence, whatsoever its degree, of the Contractor, its agents, servants, subcontractors, employees or otherwise, to the extent that the risks thereof are of the types covered by usual forms of pre-keel and post-keel laying full builder's risk insurance, war risk insurance



and other customary forms of insurance. The risk of loss and damage assumed by the Commission hereunder shall include, but not be limited to, those covered by (i) Marine Builder's Risk (Navy Form Syndicate) policy, including the rider attached to the "Free of Capture and Seizure" clause thereof and (ii) War Damage Policy, both as set forth in the pamphlet entitled "Standard Forms of Marine Builder's Risks (Navy Form Syndicate) and War Damage Insurance Policy Referred to in Vessel Contracts of the Bureau of Ships" published by the Navy Department under date of November 23, 1942.

"All insurance required pursuant to instruction of the Commission shall at all times be maintained with companies, underwriters or underwriting funds, in amounts and under forms of policies, satisfactory to the Commission.

"The Contractor shall not be deemed to have warranted the validity or coverage of any such insurance. In the event that any [167] of the insurance required by the Commission hereunder by reason of any act, omission or negligence of the Contractor shall not be kept in full force and effect, the Contractor shall pay to the Commission all losses and indemnify the Commission against all claims and demands which would otherwise have been covered by such insurance. Approval by the Commission or its authorized representative of policies taken out by the Contractor at the direction of the Commission shall establish the Contractor's compliance hereunder with the requirements of the Commission.

“Payments made by the Commission to the Contractor, either on account of liabilities incurred by the Contractor or on account of the cost of replacing or repairing vessel property lost or damaged, shall not be taken into account in determining the amount of payment to be made by the Commission to the Contractor under the provisions of paragraph (d) of Article 15 of this contract.

“The obligation of the Contractor to insure against risk of loss of or damage to any shipyard facilities owned by the United States, represented by the Commission, shall be those specified in the contract under which such facilities were constructed, as amended to date hereof, and nothing contained in this contract shall be construed as imposing any obligations upon the Contractor to insure such shipyard facilities or any liability in the event of loss or damage other than those specified in said contract for the construction of such shipyard facilities.”

Article 2. The contract price stated in Article 4 of the Vessel Contract shall be reduced by an amount equal to 110 per cent of the estimated cost of premiums on insurance against risk of loss or damage, including third party liabilities assumed by the Commission under the terms of this amendatory agreement and not assumed by it under the Vessel Contract or any amendments previously made thereto.

This agreement shall be effective as of the date thereof, and any additional liabilities assumed by the Commission under the provisions of Article 21 of the Vessel Contract as hereby amended shall be applicable only to claims

and actions arising out of events occurring on or after such date.

In Witness Whereof, the parties hereto have executed this agreement as of the day and year first above written.  
(Seal)

UNITED STATES MARITIME COMMISSION

By: E. S. LAND

Chairman

Attest:

A. J. WILLIAMS

Secretary

(Seal)

TAVARES CONSTRUCTION COMPANY, INC.

By: CARLOS TAVARES

President

Attest:

DON F. GATES

Secretary

STROUD AND SEABROOK

By: LLOYD S. STROUD

Lloyd S. Stroud

(Individually and as a partner)

By: R. S. SEABROOK

R. S. Seabrook

(Individually and as a partner)

C. M. ELLIOTT

C. M. Elliott

Approved as to form:

WADE H. SKINNER

General Counsel

U. S. Maritime Commission [168]

## EXHIBIT 6

Contract No. MCc-25348

This Agreement, made and entered into as of the 30th day of November, 1943, by and between the United States Maritime Commission (herein called the "Commission") and Tavares Construction Company, Inc., a corporation organized and existing under the laws of the State of California, Lloyd S. Stroud and R. S. Seabrook, individually and as a partnership of Stroud and Seabrook, and C. M. Elliott, Carlos Tavares, Henry M. Page, and Don F. Gates, said corporations and persons being joint venturers doing business under the name of Concrete Ship Constructors (herein called the "Cotractor");

Whereas:

1. Under dates of November 27, 1941 and June 30, 1942, the Contractor and the Commission entered into two contracts (herein called the "Vessel Contracts") for the construction by the Contractor for the Commission of an aggregate of twenty-two concrete barges;

2. The Vessel Contracts provided for the payment to the Contractor, as consideration for the performance of work thereunder, of an amount equal to the costs of such work determined in the manner therein set forth and a fee therein provided for, and the parties hereto desire to provide that there shall be paid, in lieu of such compensation, a lump-sum amount subject to the adjustments hereinafter provided for;

3. Under the provisions of Public Law 46 (77th Congress), approved May 2, 1941, the Commission is authorized, upon its determination that such action is in the best interests of national commerce and defense, be-

cause of changes in conditions occurring after the execution of its contracts theretofore or thereafter entered into for the construction of vessels, to modify such contracts in conformity with the provisions of said law and to adjust the payments to be made thereunder; and

4. The Commission has determined that it is in the best interests of national commerce and defense to modify the Vessel Contracts so as to provide for the payment of such lump-sum amount upon the conditions hereinafter set forth.

Now, Therefore, the parties hereto agree as follows:

Article 1. In lieu of the payments provided for in the Vessel Contracts, the Commission shall pay to the Contractor the sum of \$30,515,208 (herein called the "contract price") as full consideration for the performance of such contracts.

Article 2. (a) Except as otherwise provided in paragraph (b) of Article 3, hereof, all amounts heretofore or hereafter paid under the provisions of the Vessel Contracts shall be considered partial payments of said contract price and to the extent thereof to have discharged the Commission's obligations in respect to the payment of such price.

(b) The remainder of the contract price shall be payable as follows:

(1) Partial payments shall be made by the Commission to the Contractor as the work progresses, at the end of each calendar month or as soon thereafter as practicable; Provided, however, that such payments shall not exceed in the aggregate 96 per cent of the value (as represented by the contract



price) of the work done and materials delivered to the yard for the construction of the Vessels, and provided, further, that the Commission may, on such terms and conditions as it may prescribe, include, as part of the value of the work done on the Vessels work performed by any subcontractor on materials, machinery or equipment to be installed in the Vessels, even though such subcontractor has not made delivery thereof [169] at the yard or plant of the Contractor or completed the work required of him with respect thereto if the title to such materials, machinery or equipment included as part of the value of the work done on the Vessels shall have vested in the Commission.

(2) The Commission may, on such terms and conditions as it may prescribe, make payment to the Contractor of the full contract price, including retained percentages less authorized reductions for each Vessel completed and accepted hereunder on the basis of \$1,387,054 per Vessel.

(3) The remainder of the contract price shall be payable to the Contractor upon the completion of all the work to be performed hereunder provided that if the Commission shall at such time have determined that the Contractor will have an obligation to make payments to it under the provisions of Article 4 hereof, the Commission may withhold from such payment an amount not to exceed that which it has then determined that the Contractor is obligated to pay under the provisions of said Article 4.

Article 3. (a) In addition to the payments of the contract price specified in the preceding Article 2, the

Commission will reimburse the Contractor for those rentals which are paid by the Contractor to Defense Plant Corporation and are reimbursable pursuant to the provisions of Article 2 of each of the Vessel Contracts and will also pay the Contractor an amount equal to any taxes validly assessed against the shipyard facilities of the Contractor or any interests of the Contractor therein to the extent that such taxes become payable during the performance of the work hereunder or under the Vessel Contracts if such taxes shall have not been heretofore reimbursed to the Contractor under the provisions of the Vessel Contracts.

(b) The contract price stated in Article 1, hereof, does not include any amount for Workmen's Compensation Insurance Premiums. The Commission will pay to the Contractor an amount equal to the cost of Workmen's Compensation Insurance Premiums in addition to the contract price; such payment to be made on the basis of the cost incurred; and no such payment heretofore or hereafter made to be considered a payment on account of the contract price stated in Article 1, hereof. It is understood and agreed, however, that any payment made under the Vessel Contracts on account of the cost of Workmen's Compensation Insurance Premiums shall discharge to the extent thereof the Commission's obligation to make payment under this Article. Any refunds or dividends made by the Workmen's Compensation insurer shall be paid to the Commission or credited to such costs reimbursable as aforesaid, and if upon the completion of the work to be performed under the Vessel Contracts the Commission so requests, the Contractor will assign to the Commission the Workmen's Compensation insurance policies obtained by it in connection with the per-

formance of such work, including the right to receive any refunds of premiums or dividends.

(c) There shall be deducted from the contract price payable to the Contractor an amount equal to (i) any City and County taxes or rental of the shipyard site or any part thereof included in the amount paid to the Contractor under the Vessel Contracts and later refunded to the Contractor and (ii) the difference between \$71,000 and such amount as shall be paid in final settlement of a claim of Fairbanks, Morse & Co. on account of the termination of a subcontract designated Order No. N-47 entered into by the Contractor with such company.

(d) In the event that the labor rates for shipyard labor established by the Zone Standards Agreement shall, subsequent to the date of this agreement be increased, the contract price shall be increased by an amount equal [170] to the actual net increase in the cost of the performance of the work under the Vessel Contracts due to such change as determined by the Commission.

#### Article 4. The Contractor agrees:

(1) To make a report under oath to the Commission upon completion of this contract, setting forth in the form prescribed by the Commission the total contract price, the total cost of performing this contract, the amount of Contractor's overhead charged to such cost, the net profits and the percentage such net profits bears to the contract price, and such other information as the Commission shall prescribe;

(2) To pay to the Commission profit, as shall be determined by the Commission, in excess of \$750,00 of the contract price: Provided, That, if such amount is

not voluntarily paid, the Commission shall determine the amount of such excess profit and collect it in the same manner that other debts due the United States may be collected;

(3) That the books, files, and all other records of the Contractor, or any holding, subsidiary, affiliated, or associated company, shall at all times be subject to inspection and audit by any person designated by the Commission, and the premises, including the Vessel, of the Contractor, shall at all times be subject to inspection by the agents of the Commission.

It is understood and agreed that the provisions of this Article shall not apply to contracts or subcontracts for scientific equipment used for communication and navigation as may be so designated by the Commission.

The requirement of payment by the Contractor to the Commission of profits as provided in this Article is contractual and shall in effect constitute a reduction in the contract price payable by the Commission as finally determined hereunder. The method of accounting for profits and the determination of costs incurred by the Contractor shall, however, be in accordance with the requirements of Section 505(b) of the Merchant Marine Act of 1936 and the applicable regulations of the Commission issued thereunder.

Article 5. (a) Title to all materials, supplies and equipment purchased by the Contractor for use in the performance of work under the Vessel Contracts, irrespective of whether such items shall actually be used in the performance of such work under such contract, shall vest in the Commission, and in the event that any such items are not so used, the Commission may remove them from the shipyard of the Contractor.

(b) Included in the contract price specified in Article 1 hereof was the amount of rentals paid or to be paid by the Contractor for shipyard equipment under rental agreements which provided for the vesting of title to the rented equipment in the Commission when the rental paid thereunder equalled the replacement value of the equipment as of the beginning of the rental period or for an option in the Contractor to purchase such equipment and apply the rentals paid to the purchase price. In the event that prior to the completion of the work hereunder the Contractor may, in consideration of the rentals paid, acquire any item of equipment rented as aforesaid, it shall acquire such title and deliver the item of equipment so acquired to the Commission upon the completion of the work hereunder, subject, however, to the Contractor's right to use such item as provided for in any other contract or agreement between the Contractor and the Commission.

Article 6. Each of the Vessel Contracts is amended so as to delete therefrom Article 6, Article 9, Article 14, Article 15 and Article 16 thereof. Except and to the extent that they are inconsistent with the terms of [171] this agreement, the other terms and conditions of the Vessel Contracts shall remain in full force and effect and shall be applicable to the performance of the work called for thereunder.

In Witness Whereof, the parties hereto have executed this agreement as of the day and year first above written.  
(Seal)

UNITED STATES MARITIME COMMISSION

By: E. S. LAND

Chairman



Attest:

R. L. McDONALD

Asst. Secretary

(Seal)

CONCRETE SHIP CONSTRUCTORS

TAVARES CONSTRUCTION COMPANY, INC.

By: CARLOS TAVARES

President

Attest:

DON F. GATES

Secretary

STROUD AND SEABROOK

By: LLOYD S. STROUD

Lloyd S. Stroud

(Individually and as a partner)

By: R. S. SEABROOK

R. S. Seabrook

(Individually and as a partner)

C. M. ELLIOTT

C. M. Elliott

CARLOS TAVARES

Carlos Tavares

HENRY M. PAGE

Henry M. Page

DON F. GATES

Don F. Gates

Approved as to form:

WADE H. SKINNER

General Counsel

U. S. Maritime Commission

[Endorsed]: Filed Dec. 23, 1944. Edmund L. Smith,  
Clerk. [172]

In the District Court of the United States in and for the  
Southern District of California

Southern Division

No. 248-SD Civil

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CERTAIN PARCELS OF LAND IN THE CITY OF  
NATIONAL CITY, COUNTY OF SAN DIEGO,  
STATE OF CALIFORNIA; TAVARES CON-  
STRUCTION COMPANY, INC., a Corporation;  
THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY, a Corporation; SAN  
FRANCISCO BRIDGE COMPANY, a Corporation;  
LEONARD McLAUHLIN, Individually, and Doing  
Business Under the Name and Style of McLAUHLIN  
WATER TAXI COMPANY; CARL A. JOHNSON;  
PEARL JOHNSON; SANTA FE LAND IM-  
PROVEMENT COMPANY, a Corporation; SAN  
DIEGO AND ARIZONA EASTERN RAILWAY  
COMPANY, a Corporation; CITY OF NATIONAL  
CITY, a Municipal Corporation; COUNTY OF SAN  
DIEGO, a Body Politic and Corporate; STATE OF  
CALIFORNIA, a Corporation Sovereign, et al.,

Defendants.

DECREE ON AMENDED DECLARATION OF  
TAKING

Comes now the plaintiff, United States of America, by  
Eugene D. Williams, Special Assistant to the Attorney  
General of the United States of America, and Wm. J.  
Adams, Special Attorney, Lands Division, Department

of Justice, and moves the Court to enter a Decree on Amended Declaration of Taking filed in the above entitled action on December 23, 1944, [173] and upon consideration of the Complaint in Condemnation on file herein, the said Amended Declaration of Taking, and the statutes in such cases made and provided, the Court finds and decrees as follows:

First: That the United States is entitled to acquire property by eminent domain for the purposes as prayed for in said Complaint;

Second: That said Complaint was filed at the request of the United States Maritime Commission, acting by and through E. S. Land, Chairman of the United States Maritime Commission, the authority empowered by law to acquire the property described in said Complaint, and also under the authority of the Attorney General of the United States;

Third: That said Complaint in Condemnation and Amended Declaration of Taking state the authority under which, and the public use for which, said property was taken; that the United States Maritime Commission is duly authorized and empowered by law to acquire property such as is described in the Complaint, for the public use as provided for in the Acts of Congress hereinafter set forth, and that the Attorney General of the United States is the person authorized by law to direct the institution of such condemnation proceedings;

Fourth: That a proper description of the lands sought to be taken, sufficient for identification, is set out in said Amended Declaration of Taking;

Fifth: That a statement of each estate or interest in said lands taken for said public use is set out in said Amended Declaration of Taking;

Sixth: That a plat or plan showing the lands taken is annexed to and incorporated in said Amended Declaration of Taking;

Seventh: That a statement is contained in said Amended Declaration of Taking, and set forth in Schedule "B" annexed thereto, of a sum of money estimated by said acquiring authority to be just compensation for the taking of said lands, in the amount of One Hundred Seventy-one Thousand, Six Hundred and Fifty Dollars (\$171,650.00), and that said sum was deposited in the Registry of this Court for the use of the persons entitled thereto, upon and at the time [174] of the filing of the said Declaration of Taking No. 1 and of said Amended Declaration of Taking;

Eighth: That there is a statement in said Amended Declaration of Taking that the estimated ultimate award of compensation for the taking of said lands, in the opinion of the United States Maritime Commission, will be within the limits prescribed by Congress to be paid as a price therefor.

And the Court having fully considered said Complaint in Condemnation, the Amended Declaration of Taking, and the statutes in such cases made and provided, is of the opinion that the United States of America is entitled to take the property hereinafter described and to have the estate or interest hereinafter set forth vested in it pursuant to and in accordance with the Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U. S. C. A., Sec. 258a), and Acts supplementary thereto and

amendatory thereof, and under the further authority of the Act of Congress approved August 25, 1941 (Public Law 247—77th Congress), the Act of Congress approved March 5, 1942 (Public Law 474—77th Congress), the Merchant Marine Act of 1936, as amended, and the Act of Congress approved March 27, 1942 (Public Law 507—77th Congress).

It Is Therefore Ordered, Adjudged and Decreed that the fee simple title to the lands hereinafter described, excepting, however, all of the right, title and interest of the United States of America or its agent, Defense Plant Corporation, in and to said real estate, including all improvements and fixtures located thereon or in any way appertaining thereto, which have heretofore vested in the United States or its agent, Defense Plant Corporation, by virtue of the following instruments: Agreement dated December 27, 1941, between the Defense Plant Corporation and the Tavares Construction Company, Inc.; Agreement dated November 27, 1941, between the United States Maritime Commission and the Tavares Construction Company, Inc.; Lease Agreement dated January 1, 1942, between the City of National City and the Tavares Construction Company, Inc., and assignment thereof to the Defense Plant Corporation, dated January 30, 1942; Agreement dated October 26, 1943, between the United States Maritime Commission and the Tavares Construction Company, Inc.; Agreement dated June 30, 1942, between the United States Maritime Commission and the Tavares Construction Company, [175] Inc.; Agreement



dated November 30, 1943, between the United States Maritime Commission and the Tavares Construction Company, Inc., a copy of each of which said agreements is attached to the said Amended Declaration of Taking, and to which reference is hereby made for further particulars, be and hereby is vested in the United States of America, and said lands are deemed to be condemned and taken, and are condemned and taken, for the use of the United States of America, and the right to just compensation for the same is vested in the persons entitled thereto when said compensation shall be ascertained and awarded in this proceeding and established by judgment thereunder pursuant to law.

The lands so condemned and taken are particularly described upon the sheets hereto annexed marked Schedule "A" and by this reference made a part hereof.

Nothing herein is to be considered as a determination by the Court that the estimate of the United States Maritime Commission, or the amount deposited, is or is not just compensation for the taking by the plaintiff of the herein described property.

This cause is held open for such other and further orders, judgments, and decrees as may be necessary in the premises.

Dated: This 27th day of December, 1944, at 10:30 o'clock A. M.

PAUL J. McCORMICK

United States District Judge

Presented by:

EUGENE D. WILLIAMS

Special Assistant to the Attorney General

WM. J. ADAMS

Special Attorney, Lands Division

Department of Justice

By Eugene D. Williams

Attorneys for Plaintiff [176]

### SCHEDULE "A"

Those Certain Parcels of Land in the City of National City, County of San Diego, State of California, More Particularly Described as Follows:

Parcel 1. [Description not printed as it is same as set forth in Complaint on page 6.]

Parcel 2. [Description not printed as it is same as set forth in Complaint on page 7.]

Parcel 3. [Description not printed as it is same as set forth in Complaint on page 7.] [177]

Parcel 4. [Description not printed as it is same as set forth in Complaint on page 8.] [178]

Parcel 5. [Description not printed as it is same as set forth in Complaint on page 9.]

Parcel 6. [Description not printed as it is same as set forth in Complaint on page 10.] [179]

Parcel 7. [Description not printed as it same as set forth in Complaint on page 10.]

Parcel 8. [Description not printed as it is same as set forth in Complaint on page 11.] [180]

Parcel 9. [Description not printed as it is same as set forth in Complaint on page 11.]

Parcel 10. [Description not printed as it is same as set forth in Complaint at page 12.] [181]

Parcel 11. [Description not printed as it is same as set forth in Complaint on page 13.] [182]

#### PARCEL "A"

That portion of the tidelands lying between the U. S. Bulkhead Line and Pierhead Line of San Diego Bay, National City, County of San Diego, California, described as follows:

[Description not printed as it is same as set forth in Amendment to Complaint on page 24.]

Judgment entered Dec. 27, 1944. Docketed Dec. 27, 1944. Book 10, page 44. Edmund L. Smith, Clerk, by B. B. Hansen, Deputy.

[Endorsed]: Filed Dec. 27, 1944. Edmund L. Smith, Clerk. [183]

[Title of District Court and Cause]

AMENDED AND SUPPLEMENTAL COMPLAINT  
IN CONDEMNATION [184]

Comes now the plaintiff, United States of America, by Eugene D. Williams, Special Assistant to the Attorney General, and Wm. J. Adams, Special Attorney, Lands Division, Department of Justice, as its attorneys, on application of the duly authorized officer of the United States, hereinafter referred to as the "requesting officer," and under the direction and by the authority of the Attorney General of the United States, and by leave of Court first had and obtained, files its Amended and Supplemental Complaint herein, and for cause of action against the above named defendants, and each of them, complains and alleges:

I.

That the plaintiff, United States of America, is entitled to acquire by the exercise of its power of eminent domain, pursuant to the statutes hereinafter set forth, the property hereinafter described for the uses and purposes hereinafter set forth.

II.

That in accordance with the provisions of said statutes, said requesting officer, for and in behalf of the United States, has designated and determined that the property hereinafter described is suitable and necessary for the purposes of the United States, and has selected such property for acquisition by the United States in these proceedings, and said selection, designation, and determination ever since have been and now are in full force and effect; that the purposes for which the plaintiff is taking

said property as hereinafter alleged are necessary and constitute a public use, which use is authorized by law; that the acquisition thereof by plaintiff is, and will be, of greatest public benefit and to the least private injury; that plaintiff is informed and believes, and upon such information and belief alleges, that no part of said property has heretofore been appropriated to any public use, and if any part or portion thereof has heretofore been appropriated to a public use, the use to which said property is herein sought to be condemned and appropriated is a more necessary and paramount public use.

### III.

That plaintiff is informed and believes, and upon such information and belief alleges, that each parcel of property hereinafter described consti- [185] tutes a whole parcel and not a part thereof, except where otherwise designated herein.

### IV.

That plaintiff has named herein by their true names, or by fictitious names, all defendants known or believed by it to have some interest in said property; that there may be other persons having some interests therein whom the plaintiff hereby identifies as unknown persons, and makes such unknown persons defendants herein to the end that title to said property may be vested in the United States of America to the extent hereinafter prayed for.

### V.

That the defendants Doe One to Doe Five Hundred, inclusive, and defendants One Doe Corporation, a corporation, to Twenty-five Doe Corporation, a corporation, inclusive, are and each is sued or named herein under



the fictitious names above set out for the reason that plaintiff is ignorant of the true names of said defendants; that when the true names of said defendants, or any of them, are discovered, plaintiff will amend accordingly the pleadings or proceedings herein.

That One Doe Corporation to Twenty-five Doe Corporation, inclusive, is each a corporation, organized and existing under the laws of one of the states of the United States.

## VI.

That this action is brought by the plaintiff under the authority of and pursuant to the provisions of the Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U. S. C. A., Sec. 258a), and acts supplementary thereto and amendatory thereof, and under the further authority of the Act of Congress approved August 25, 1941 (Public Law 247—77th Congress), the Act of Congress approved March 5, 1942 (Public Law 474—77th Congress), the Merchant Marine Act of 1936, as amended, and the Act of Congress approved March 27, 1942 (Public Law 507—77th Congress), and any acts amendatory thereof or supplementary thereto; that the public use for which the lands hereinafter described are sought to be taken is the same as authorized by said acts, and is for the construction of facilities to be used in the construction and repair of ships and the operation of such facilities. [186]

## VII.

That since the filing of plaintiff's original complaint herein, the United States Maritime Commission, acting by and through E. S. Land, Chairman of the United States Maritime Commission, hereinbefore referred to as the "requesting officer," has caused to be filed herein and has filed on behalf of the plaintiff its Declaration of Taking No. 1 and Amended Declaration of Taking, pursuant to the provisions of the Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U. S. C. A., Sec. 258a), wherein and whereby the property hereinafter described is taken for the use and benefit of the United States of America; that simultaneously with the filing of the said Declaration of Taking No. 1 and the said Amended Declaration of Taking, plaintiff paid and deposited in the Registry of this court, to the use of the persons entitled thereto, a sum of money as the estimated just compensation for the taking of the real property specifically described in the said Declaration of Taking No. 1 and the said Amended Declaration of Taking.

## VIII.

That the property hereinafter described, which is sought to be taken and condemned herein, was shown upon a plat or plan annexed to the said Declaration of Taking No. 1 and to the said Amended Declaration of Taking, which said plats or plans are specifically referred to and identified in the said Declaration of Taking No. 1 and Amended Declaration of Taking as Exhibit "B" attached thereto, and specific reference is hereby made to said plats or plans.

IX.

That the lands to be taken and condemned in this action are described as follows: [187]

Those Certain Parcels of Land in the City of National City, County of San Diego, State of California, More Particularly Described as Follows:

Parcel 1. [Description not printed as it is same as set forth in Complaint on page 6.]

Parcel 2. [Description not printed as it is same as set forth in Complaint on page 7.]

Parcel 3. [Description not printed as it is same as set forth in Complaint on page 7.] [188]

Parcel 4. [Description not printed as it is same as set forth in Complaint on page 8.] [189]

Parcel 5. [Description not printed as it is same as set forth in Complaint on page 9.]

Parcel 6. [Description not printed as it is same as set forth in Complaint on page 10.] [190]

Parcel 7. [Description not printed as it is same as set forth in Complaint on page 10.]

Parcel 8. [Description not printed as it is same as set forth in Complaint on page 11.] [191]

Parcel 9. [Description not printed as it is same as set forth in Complaint on page 11.]

Parcel 10. [Description not printed as it is same as set forth in Complaint on page 12.] [192]

Parcel 11. [Description not printed as it is same as set forth in Complaint on page 13.] [193]

## PARCEL A

That portion of the tidelands lying between the U. S. Bulkhead Line and Pierhead Line of San Diego Bay, National City, County of San Diego, California, described as follows:

[Description not printed as it is same as set forth in Amendment to Complaint on page 24.] [194]

## X.

That the estate or interest in the real property hereinbefore described which plaintiff by this action intends and seeks to take, acquire, condemn, hold and own is the fee simple title thereto, excepting, however, all the right, title and interest of the United States of America or its agent, Defense Plant Corporation, in and to said real estate, including all improvements and fixtures located thereon or in any way appertaining thereto, which have heretofore vested in the United States or its agent, Defense Plant Corporation, by virtue of the following instruments: Agreement dated December 27, 1941, between the Defense Plant Corporation and the Tavares Construction Company, Inc.; Agreement dated November 27, 1941, between the United States Maritime Commission and the Tavares Construction Company, Inc.; Lease Agreement dated January 1, 1942, between the City of National City and the Tavares Construction Company, Inc., and assignment thereof to the Defense Plant Corporation, dated January 30, 1942; Agreement dated October 26, 1943, between the United States Maritime Commission and the

Tavares Construction Company, Inc.; Agreement dated June 30, 1942, between the United States Maritime Commission and the Tavares Construction Company, Inc.; Agreement dated November 30, 1943, between the United States Maritime Commission and the Tavares Construction Company, Inc., a copy of each of which said contracts is attached to the said Amended Declaration of Taking on file in the office of the Clerk of the above entitled court in the records of the within action as Exhibit 1 to Exhibit 6, inclusive, and to which reference is hereby made.

## XI.

That the defendant City of National City, a municipal corporation is the apparent and presumptive owner of the real property hereinbefore described and referred to as Parcels 1, 2, 3, 5, 6, 7, 8 and A; that the defendant The Atchison, Topeka & Santa Fe Railway Company, a corporation, is the apparent and presumptive owner of the real property hereinbefore described as Parcel 4; that the defendants Carl A. Johnson and Pearl Johnson are the apparent and presumptive owners of the real property hereinbefore described as Parcel 9; that the defendant Santa Fe Land Improvement Company, a corporation, is the apparent and [195] presumptive owner of the real property hereinbefore described as Parcels 10 and 11; that the defendants Tavares Construction Company, Inc., a corporation, San Francisco Bridge Company, a corporation, Leonard McLauchlin, both individually and doing business under the name and style of McLauchlin Water



Taxi Company, San Diego and Arizona Eastern Railway Company, a corporation, City of National City, a municipal corporation, County of San Diego, a body politic and corporate, State of California, a corporation sovereign, Doe One to Doe Five Hundred, inclusive, One Doe Corporation, a corporation, to Twenty-five Doe Corporation, a corporation inclusive, each claims some right, title, interest, or lien to, in, or upon the said real property or some part thereof, the exact nature of which such claim or claims is unknown to plaintiff.

## XII.

That the defendant City of National City is a municipal corporation organized and existing under and by virtue of the laws of the State of California; that the defendant County of San Diego is a body politic and corporate organized and existing under and by virtue of the laws of the State of California; that the defendant State of California is a corporation sovereign and one of the states composing the United States of America;

That the defendants Tavares Construction Company, Inc., San Francisco Bridge Company, and Santa Fe Land Improvement Company are, and each of said defendants is, a corporation organized and existing under and by virtue of the laws of the State of California;

That the defendant The Atchison, Topeka & Santa Fe Railway Company is a corporation organized and existing under and by virtue of the laws of the State of Kansas;

That the defendant San Diego and Arizona Eastern Railway Company is a corporation organized and existing under and by virtue of the laws of the State of Nevada;

That the defendant Leonard McLauchlin is an individual doing business under the fictitious firm name and style of McLauchlin Water Taxi Company. [196]

Wherefore, plaintiff prays judgment:

1. That the Court ascertain and assess the value of the lands herein sought to be taken and condemned, and each and every separate estate or interest therein;

2. Adjudging that the public use for which plaintiff takes and condemns said lands is a necessary public use of the plaintiff and that the use to which said lands are being applied is a use authorized by law and that all of said lands are necessary thereto;

3. Vesting in the United States of America the fee simple title to the lands hereinbefore described, to be utilized for construction of facilities by the United States for the construction and repair of ships and the operation of such facilities for war purposes, and for such other uses as may be authorized by Congress or by Executive Order, and that the said lands shall be deemed to be condemned and taken for the use of the United States of America for the uses and purposes hereinbefore set forth; and

Further adjudging that the right to just compensation for the taking of said lands hereinbefore described be vested in the persons entitled thereto as their respective interests may appear and be established and adjudged herein;

4. That all liens or encumbrances of record against the property herein sought to be taken and condemned be satisfied out of the award to be made in this proceeding;

5. That an order be made for the delivery of immediate possession of said lands to the United States of America pursuant to the provisions of the Acts of Congress hereinbefore set forth, and that an order be made for the notice to be given of such order for possession;

6. For such other and further relief as the Court deems meet and proper in the premises and as the nature of the case may require.

Dated: This 30th day of December, 1944.

EUGENE D. WILLIAMS

Special Assistant to the Attorney General

WM. J. ADAMS

Special Attorney, Lands Division  
Department of Justice

By Wm. J. Adams

Attorneys for Plaintiff

[Endorsed]: Filed Jan. 15, 1945. Edmund L. Smith,  
Clerk. [197]

[Title of District Court and Cause]

MOTION FOR MORE DEFINITE STATEMENT  
OR FOR BILL OF PARTICULARS

Come now the defendants Tavares Construction Company, Inc., a corporation, Concrete Ship Constructors, a joint venture, Stroud-Seabrook, a copartnership, Lloyd S. Stroud, R. S. Seabrook, C. M. Elliott, Carlos Tavares, Henry M. Page and Don F. Gates, and move the Court for an order requiring the plaintiff to set forth a more definite statement in its Amended and Supplemental Complaint or for a bill of particulars, on the ground that said Amended and Supplemental Complaint is ambiguous, uncertain, and capable of varied interpretations as to what rights and interests of these defendants are sought to be condemned and that it is necessary for these matters to be averred with sufficient definiteness or particularity [198] to enable these defendants properly to prepare their responsive pleading and to prepare for trial.

The defects complained of are as follows:

(a) Paragraph IX of the Amended and Supplemental Complaint describes twelve parcels of land sought to be condemned, of which Parcels 1, 2, 9, 10 and 11 are alleged to be under lease from the various owners thereof to defendant, Tavares Construction Company, Inc.

(b) Paragraph X of the Amended and Supplemental Complaint alleges that plaintiff seeks to condemn the fee simple title to said real property, excepting all the right, title and interest of the United States of America or its agent, Defense Plant Corporation, in and to said real estate, including all improvements and fixtures located thereon or in any way appertaining thereto, which have

heretofore vested in the United States or its agent, Defense Plant Corporation, by virtue of certain agreements referred to therein to which these defendants are parties. By these agreements the United States was to acquire title to the lands and convey it to Defense Plant Corporation. By these agreements Tavares Construction Company, Inc. constructed shipyard facilities on these lands and acquired machinery for Defense Plant Corporation, which facilities and machinery remained personalty even though affixed or attached to the realty. By these agreements the use of the land, facilities and equipment was leased to these defendants for the construction of ships for the Maritime Commission, and these defendants were granted an option to purchase the lands, facilities and machinery on the termination of the lease.

(c) These defendants can not ascertain from said Amended and Supplemental Complaint whether the plaintiff seeks to condemn only the leasehold interests of [199] Tavares Construction Company, Inc. in Parcels 1, 2, 9, 10 and 11, which Tavares Construction Company, Inc. obtained from the owners of said parcels, or whether the plaintiff also seeks to condemn the leasehold and option rights acquired by these defendants under the agreements referred to in Paragraph X, and if so, to what extent.

The details desired are as follows:

1. To more definitely state whether it is sought to condemn only the leasehold rights of Tavares Construction Company in the lands described as Parcels 1, 2, 9, 10 and 11, as set forth in Paragraph IX of the Amended and Supplemental Complaint and derived from the defendant owners of such lands, or whether it is also sought to condemn the leasehold and option rights granted these



defendants by Defense Plant Corporation and United States Maritime Commission by the various agreements referred to in Paragraph X of said Complaint to use and purchase all of the parcels of land described in said Paragraph IX.

2. To more definitely state whether or not it is sought to condemn the leasehold and option rights granted these defendants by Defense Plant Corporation and United States Maritime Commission pursuant to the various agreements referred to in Paragraph X of said Complaint to use and purchase the shipyard facilities constructed by these defendants on said lands, and/or the machinery placed on said lands by these defendants, which facilities and machinery by the terms of said agreements remain personalty even though some of them are affixed or attached to the realty, and if so, to state with particularity the items of such facilities and machinery sought to be condemned. [200]

3. To more definitely state whether the purpose of the Amended and Supplemental Complaint is to condemn the lands described in Paragraph IX in order to enable the Defense Plant Corporation and United States Maritime Commission to fully perform and carry out their agreements with these defendants referred to in Paragraph X of said Complaint, or is in contravention thereof and for the purpose of depriving these defendants of all of their rights to use and purchase said lands, facilities and machinery as granted in said agreements.

Said motion will be based upon the files and records in the above entitled action as specifically referred to in Paragraph X of said Complaint, and upon the Points and Authorities attached hereto.

Dated this 2nd day of March, 1945.

JOHN M. MARTIN  
FRANK L. MARTIN, JR.  
CHARLES C. CROUCH  
GEORGE W. CROUCH

Attorneys for Defendants Tavares Construction Company, Inc., a corporation, Concrete Ship Constructors, a joint venture, Stroud-Seabrook, a copartnership, Lloyd S. Stroud, R. S. Seabrook, C. M. Elliott, Carlos Tavares, Henry M. Page and Don F. Gates [201]

#### AUTHORITIES

"Before responding to a pleading \* \* \* a party may move for a more definite statement or for a bill of particulars of any matter which is not averred with sufficient definiteness or particularity to enable him properly to prepare his responsive pleading or to prepare for trial. The motion shall point out the defects complained of and the details desired. \* \* \*" Rule 12(e) of Federal Rules of Civil Procedure.

A complaint which seemed capable of varied interpretations was subject to motion for more definite statement or for bill of particulars. *Herman v. Mutual Life Ins. Co.*, 108 F. (2d) 678.

#### POINTS

The Agreement dated December 27, 1941 between Defense Plant Corporation and Tavares Construction Company, Inc. referred to in Paragraph X of the Amended and Supplemental Complaint and amendments thereto, provides for the acquisition of the site by Defense Plant Corporation, the construction of shipyard facilities and installation of machinery by Tavares Construction Com-

pany, Inc. thereon, title to which was to vest in Defense Plant Corporation, and the right of Tavares Construction Company, Inc. to use said site, facilities and machinery for the construction of ships for the United States Maritime Commission. Paragraph Fifteen of said Agreement grants to Tavares Construction Company, Inc. the opinion to purchase the site, facilities and machinery from Defense Plant Corporation. Said Agreement was amended on November 11, 1942, after the filing of the above entitled action, which amendment contains, among others, the following provisions: [202]

“Whereas, the Government is proceeding to acquire title to additional land to be used as a part of the site for the facilities \* \* \*, and

Whereas, upon acquisition of title to such additional land by the Government the Maritime Commission has indicated that it will cause the same to be conveyed to Defense Corporation upon receipt of payment of the cost thereof;

Now Therefore in consideration of the premises it is agreed by and between the parties hereto that said Agreement of Lease entered into on December 27, 1941, by and between Defense Corporation and Lessee, as amended, be and the same hereby is further amended in the following particulars:

\* \* \* \* \*

By adding thereto the following new paragraph Thirty-one:

Thirty-one: Lessee agrees that when Defense Corporation shall have acquired title to that part of the site now being condemned by the Government, the Agreement of Lease, dated December 27, 1941, as

amended, shall be further amended so as to provide for an increase in the maximum amount of expenditures to be made by Defense Corporation in the amount of the cost thereof to Defense Corporation (which amount shall not exceed the cost thereof to the Government), and an increase in the amount of rental to be paid by Lessee under said Agreement of Lease, as amended, in an amount sufficient to cover the cost of such part of the site. Lessee further agrees that in the event the property leased to Lessee under said Agreement of Lease, as amended, should be transferred to another branch of the Government pursuant to Paragraph Twenty-six thereof prior to the acquisition by Defense Corporation [203] of title to that part of the site now being condemned by the Government, Lessee will, if it should thereafter elect to exercise the option to purchase conferred by Paragraph Fifteen of said Agreement of Lease, as amended, pay to the Government the cost to it of such part of the site on the same basis as if such cost had been part of the cost to Defense Corporation of the property leased to Lessee under said Agreement of Lease, as amended."

In order for defendants to properly prepare their Answer and prepare for trial, it is necessary for them to be informed as to exactly what rights and interests of these defendants the plaintiff is seeking to acquire by virtue of this action. [204]

Received copy of the within Motion this 5 day of March, 1945. C. H. Scharnikow.

[Endorsed]: Filed Mar. 5, 1945. Edmund L. Smith, Clerk. [205]

[Minutes: Monday, March 26, 1945]

Present: The Honorable Harry A. Hollzer, District Judge.

This cause coming on for hearing motion of defendants Tavares Construction Co., Inc., et al., for more definite statement or Bill of Particulars, pursuant to stipulation filed March 5, 1945; C. H. Scharnikow, Special Assistant to the Attorney General, appearing as counsel for the Government; John M. Martin, Esq., and Frank L. Martin, Jr., Esq., appearing as counsel for the defendants:

Attorney Fred Martin, Jr., argues in support of the said motion.

Attorney Scharnikow makes a statement and answers certain questions of the Court. Attorney John M. Martin makes a statement.

The Court states that for clarity of the record it is ordered that the plaintiff shall, within three weeks, file a more definite statement or Bill of Particulars, such as will conform to the statements epitomized by Attorney Scharnikow and that defendant Tavares Construction Co., Inc., shall have three weeks thereafter to plead to the Amended Bill of Complaint.

Notice is waived in open court by both sides. [206]



[Title of District Court and Cause]

## BILL OF PARTICULARS

Comes now the plaintiff, United States of America, by and through Eugene D. Williams, Special Assistant to the Attorney General, and Wm. J. Adams, Special Attorney, Lands Division, Department of Justice, and pursuant to the Order of this Court dated March 26, 1945, granting the Motion of the defendants Tavares Construction Company, Inc., et al., for a More Definite Statement or a Bill of Particulars, files the following Bill of Particulars with reference to the allegations contained in Paragraph X of plaintiff's Amended and Supplemental Complaint, to-wit:

That with respect to the defendants Tavares Construction Company, Inc., a corporation, Concrete Ship Constructors, a joint venture, Stroud-Seabrook, a co-partnership, Lloyd S. Stroud, R. S. Seabrook, C. M. Elliott, Carlos Tavares, Henry M. Page, and Don F. Gates, the right, title, interest, and estate in and to the lands and all improvements and facilities located thereon described in plaintiff's Amended and Supplemental Complaint which by this action plaintiff intends and seeks to take, acquire, condemn, hold, and [207] own, is the fee simple title, including the right, title, interest, or estate, if any, in or to said lands, and all improvements and fixtures located thereon, or in any way appertaining thereto, owned, held, or claimed by said defendants, or either of them, and excepting therefrom only such right, title, interest, or

estate in said lands and all improvements and fixtures located thereon, or in any way appertaining thereto, which was vested in the United States of America or its agent, Defense Plant Corporation, at the date of the filing of this action or immediately prior to the filing of the respective Declarations of Taking under the agreements referred to in Paragraph X of the Amended and Supplemental Complaint.

Dated: April 12, 1945.

EUGENE D. WILLIAMS

Special Assistant to the Attorney General

WM. J. ADAMS

Special Attorney, Lands Division

Department of Justice

By Eugene D. Williams

Attorneys for Plaintiff

Receipt of a copy of the foregoing Bill of Particulars is hereby acknowledged this 13 day of April, 1945. John M. Martin, Frank L. Martin, Jr., Charles C. Crouch, George W. Crouch, by John M. Martin, Attorneys for Defendants Tavares Construction Company, Inc., etc., et al.

[Endorsed]: Filed Apr. 16, 1945. Edmund L. Smith, Clerk. [208]

[Title of District Court and Cause]

ANSWER TO AMENDED AND SUPPLEMENTAL  
COMPLAINT IN CONDEMNATION, AND  
COUNTER-CLAIM AND CROSS-CLAIM OF  
DEFENDANTS TAVARES CONSTRUCTION  
COMPANY, INC., A CORPORATION, CON-  
CRETE SHIP CONSTRUCTORS, A JOINT  
VENTURE, STROUD-SEABROOK, A COPART-  
NERSHIP, LLOYD S. STROUD, R. S. SEA-  
BROOK, C. M. ELLIOTT, CARLOS TAVARES,  
HENRY M. PAGE, AND DON F. GATES

Come now the defendants, Tavares Construction Company, Inc., a corporation, Concrete Ship Constructors, a joint venture, Stroud-Seabrook, a copartnership, Lloyd S. Stroud, R. S. Seabrook, C. M. Elliott, Carlos Tavares, Henry M. Page, and Don F. Gates, and for their Answer to plaintiff's Amended and Supplemental Complaint and plaintiff's Bill of Particulars, and for their Counter-Claim against the plaintiff, United States of America, and for their Cross-Claim against defendants, City of National City, a municipal corporation, State of California, a corporation sovereign, the County of San Diego, a body politic and corporate, Atchison, Topeka & Santa Fe Railway, a corporation, San Francisco Bridge Company, a corporation, Leonard McLaughlin, McLaughlin Water Taxi Company, Carl A. Johnson, [209] Pearl Johnson, Santa Fe Land Improvement Company, a corporation, San Diego & Arizona Eastern Railway Company, a corporation, and Defense Plant Corporation, an agency of the United States of America, and admit, deny and allege:

## I.

Answering Paragraph VII of the Amended and Supplemental Complaint, these answering defendants deny that plaintiff has paid or deposited in the Registry of this Court any sum of money to the use of these defendants, or any of them, as the estimated just compensation for the acquisition of any property or rights of these answering defendants herein sought to be condemned.

## II.

Answering Paragraph VIII of said Amended and Supplemental Complaint, these answering defendants deny that there is shown upon said plat or plan annexed to said Declaration of Taking No. 1 and said Amended Declaration of Taking the improvements and fixtures located thereon which plaintiff in its Bill of Particulars alleges it is seeking to take, acquire and condemn.

## III.

Answering Paragraphs X and XI of said Amended and Supplemental Complaint as supplemented by said Bill of Particulars, these answering defendants admit and allege that they claim and have a right, title and interest in and to said real property and in and to the improvements, fixtures and personal property located thereon in which title vested in the United States or Defense Plant Corporation by virtue of the Agreements referred to in said Paragraph X, as follows:

(a) By the terms of said Agreement dated December 27, 1941 between defendant Tavares Construction Company, Inc., and defendant Defense Plant Corporation referred to in Paragraph X of said Complaint and attached to said Amended Declaration of Taking, and various amendments of said Agreement, Defense Plant Corpora-

tion [210] agreed to acquire and hold in conformity with the terms of said Agreement and amendments thereto the real property described in said Complaint, and said Tavares Construction Company, Inc. agreed to and has pursuant thereto constructed for said Defense Plant Corporation certain shipyard facilities and acquired certain machinery for the construction of ships on said real property, without profit to Tavares Construction Company, Inc., title to which facilities and machinery vested in Defense Plant Corporation. In consideration thereof Defense Plant Corporation by the terms of said Agreement and amendments thereto, leased to Tavares Construction Company, Inc. said real property, facilities, and machinery for a term ending December 31, 1947, and agreed to extend said term to December 31, 1949. Said lease further provides that when the rent paid by Tavares Construction Company, Inc. thereunder to Defense Plant Corporation equals the amount expended by Defense Plant Corporation for said facilities and machinery plus 4% interest, that Tavares Construction Company, Inc. shall not be required to pay any further rentals. Said rental payments have now been paid in full and Tavares Construction Company, Inc. is now entitled to use and occupy said premises, facilities and machinery rent free for the remainder of said term and extension thereof. Said lease gives the right to Defense Plant Corporation to terminate said lease upon certain conditions, but in the event of such termination Tavares Construction Company, Inc. is granted the right and option to purchase said site, facilities and machinery from Defense Plant Corporation. Said lease is now in full force and effect and these answering defendants are occupying and using said site, facilities and machinery pursuant thereto.



(b) By the terms of Amendment dated November 11, 1942 to said Agreement dated December 27, 1941 between Tavares Construction Company, Inc. and Defense Plant Corporation, it was understood that Defense Plant Corporation would acquire the fee [211] simple title to the site, being the real property described in the aforesaid Amended and Supplemental Complaint, through this condemnation action by the Government. That these answering defendants are informed and believe and upon such information and belief allege that the purpose of this action is for plaintiff to acquire the fee simple title to said site, and transfer it to Defense Plant Corporation, in order to carry out said Agreement and Amendments thereto between Tavares Construction Company, Inc. and Defense Plant Corporation. That when so acquired, Tavares Construction Company, Inc. will have the right under said lease to occupy and use said site, rent free, for the remainder of the term and extension thereof, and in the event of termination of said lease, will have the right and option at its election, to either purchase said site, as well as all of the improvements, facilities and machinery located thereon belonging to Defense Plant Corporation, or to lease the whole or a portion thereof.

(c) These answering defendants have been granted the further right to use and occupy said site, facilities and machinery rent free, from time to time by plaintiff, acting through the United States Maritime Commission, the Navy Department, and the War Department, under various contracts for the construction of ships and the repair of ships and that defendant Concrete Ship Constructors, a joint venture, in which Tavares Construction Company, Inc. is a member, is now so occupying and using the same for such purposes.

(d) These answering defendants are informed and believe and upon such information and belief allege that the correct interpretation of the Amended and Supplemental Complaint as amended by the Bill of Particulars shows that the object and purpose of this action is to enable Defense Plant Corporation to carry out the terms and provisions of its said Agreement of December 27, 1941 as amended, through the acquisition by plaintiff of the real property herein sought to be condemned, without in any manner divesting these [212] answering defendants of or otherwise affecting their leasehold and option rights granted to them by Defense Plant Corporation. If the court should determine that the correct interpretation of the Amended and Supplemental Complaint as amended by the Bill of Particulars shows that it is sought herein to condemn and acquire from these answering defendants any of their lease, option or other rights under said Agreement with Defense Plant Corporation, these answering defendants allege that said rights are of very substantial value, that the court should determine and decree the exact extent and nature thereof that plaintiff by this action seeks to acquire and thereby relieve Defense Plant Corporation from its contract obligations, determine and decree the value of such rights as these answering defendants may by this action be deprived, and award these answering defendants just compensation therefor.

#### IV.

That defendant City of National City herein has attempted to oust the jurisdiction of this Court and nullify this Court's Order of Possession by the commencement of an independent action against these answering defendants in the Superior Court of the State of California in

and for the County of San Diego, being an action entitled "City of National City, a municipal corporation, Plaintiff, vs. Tavares Construction Company, Inc., a corporation, et al., Defendants," No. 121165, and filed August 25, 1944. That in said Superior Court action the defendant City of National City seeks to recover the sum of \$76,346.29 from these answering defendants for the use of said premises during the period commencing at the time plaintiff took possession of said premises pursuant to the Order of Possession issued by this Court in the above entitled cause on November 10, 1942, to the date of the filing of said Superior Court action, and for further amounts which it alleges will accrue after the commencement of said action, and has caused a Writ of Attachment to be issued and levied on moneys belonging to these answering defendants [213]

V.

That in order to avoid a multiplicity of actions and to enable this Court to properly administer its Order of Possession and to do equity herein, this Court should fully determine in this action the respective rights of all parties thereto. These answering defendants allege that the plaintiff took possession of the premises described in the Amended and Supplemental Complaint under and by virtue of the authority granted by the Second War Powers Act approved March 27, 1942 (Public Law 507, 77th Congress) and that the Order of Possession dated November 10, 1942, and the Order of Possession dated September 23, 1944, confirmed and conferred the legal right of possession of each and all of the premises described in the Amended and Supplemental Complaint upon the plaintiff, and that the plaintiff, acting through the defendant, Defense Plant Corporation, had by the afore-

said written lease dated December 27, 1941, and the amendments thereto granted the Tavares Construction Company, Inc. exclusive possession of said premises.

## VI.

That by the terms of the written contracts for the construction of ships and repair of ships entered into subsequent to November 10, 1942 between United States Maritime Commission, the Navy Department and the War Department, acting for and on behalf of the plaintiff, and these answering defendants, the plaintiff has represented that it owned said premises and agreed that the use and occupancy of all of said premises by these answering defendants would be without rental or other charge.

## VII.

That the sole right of the defendant City of National City and each and all of the other cross-defendants to recover compensation for the use of the premises described in the Amended and Supplemental Complaint during the period subsequent to November 10, 1942, being the date of entry of this Court's Order of Possession as to [214] Parcels Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, and the date of the actual taking of Parcel A, is to seek an award herein against the plaintiff for compensation for the use of said premises during said period of advance possession. These answering defendants seek a decree herein as against all of the parties herein so adjudicating the rights of these defendants.

Wherefore, these answering defendants pray judgment—

1. That the Court decree that the lease dated December 27, 1941, as amended, between Defense Plant Corpo-

ration and Tavares Construction Company, Inc., is a valid lease, is in full force and effect, and will continue to be in full force and effect in accordance with the terms and provisions thereof, and that the title taken by the plaintiff herein is subject to said lease and amendments thereto.

2. That plaintiff be required to set forth the items of property and state what rights, if any, plaintiff now seeks to take from these answering defendants by virtue of this action; that the Court determine the value thereof and award to these defendants just compensation therefor.

3. That the Court determine to what extent, if at all, plaintiff seeks by this action to deprive these answering defendants of their right to have Defense Plant Corporation carry out and live up to the terms and provisions of the lease and option rights heretofore granted by Defense Plant Corporation to these answering defendants, and the extent, if at all, to which these answering defendants are thereby damaged by Defense Plant Corporation being relieved from proceeding to carry out said lease and option in favor of these answering defendants, and award these answering defendants just compensation therefor.

4. That there is no rent or other compensation due from any of these answering defendants to either the plaintiff or to any of the cross-defendants on account of the use and occupancy [215] of any of the premises described in the Amended and Supplemental Complaint subsequent to November 10, 1942.



5. That the cross-defendants and each of them be required to assert their claims, if any they have, to the premises described in the Amended and Supplemental Complaint, and to rents or compensation for the use and occupancy thereof subsequent to November 10, 1942, in this action, and that the Court decree that the sole obligation to compensate said cross-defendants therefor is that of the plaintiff.

6. For costs of suit, and for such other and further relief as the Court may deem just and proper.

JOHN M. MARTIN

FRANK L. MARTIN, JR.

CHARLES C. CROUCH

GEORGE W. CROUCH

Attorneys for Defendants, Tavares Construction Company, Inc., a corporation, Concrete Ship Constructors, a joint venture, Stroud-Seabrook, a copartnership, Lloyd S. Stroud, R. S. Seabrook, C. M. Elliott, Carlos Tavares, Henry M. Page, and Don F. Gates [216]

[Verified.] [217]

[Affidavits of Service by Mail.] [218-219]

[Endorsed]: Filed May 4, 1945. Edmund L. Smith, Clerk.

[Title of District Court and Cause]

### ORDER

For good cause shown, and upon joint motion of counsel for the plaintiff and the defendants, Tavares Construction Company, Inc., a corporation, Concrete Ship Constructors, a joint venture, Stroud-Seabrook, a copartnership, Lloyd S. Stroud, R. S. Seabrook, C. M. Elliott, Carlos Tavares, Henry M. Page, and Don F. Gates, the submission of this case as to said defendants as upon pre-trial shall be made and argued before the Honorable Leon Yankwich at Los Angeles on the 30th day of September, 1946.

In all other respects, and for all other purposes, said cause as to all defendants shall remain, for further proceedings in the regular course, upon the San Diego calendar and in the Southern Division.

Dated: This 24th day of September, 1946.

LEON R. YANKWICH

United States District Judge

[Endorsed]: Filed Sep. 25, 1946. Edmund L. Smith,  
Clerk. [220]

[Title of District Court and Cause]

STIPULATION AND AGREED STATEMENT OF  
FACTS IN SUPPORT OF JOINT MOTION OF  
COUNSEL FOR PLAINTIFF AND THE  
DEFENDANTS, TAVARES CONSTRUCTION  
COMPANY, INC. ET AL RELATIVE TO SUB-  
MISSION OF THIS CASE AS TO SAID DE-  
FENDANTS AS UPON PRE-TRIAL.

It Is Hereby Stipulated and Agreed by and between counsel for the plaintiff and the defendants, Tavares Construction Company, Inc., a corporation, Concrete Ship Constructors, a joint venture, Stroud-Seabrook, a copartnership, Lloyd S. Stroud, R. S. Seabrook, C. M. Elliott, Carlos Tavares, Henry M. Page, and Don F. Gates, as follows:

1. The defendant, Tavares Construction Company, Inc. was one of the joint adventurers who entered into contracts with the Maritime Commission to construct concrete barges, and the interest of the Tavares Construction Company, Inc. arose as hereinafter set forth.

2. The Tavares Construction Company hereinafter referred to as TCC held a lease of certain water-front property at National City, Calif. This lease was assigned to Tavares by the Allied Engineering and Shipbuilding Company. Thereafter, and about February 2, 1942, Tavares and National City entered into a new lease, subsequently assigned to Defense Plant Corporation. [221]

3. On or about the 27th day of December, 1941, an "Agreement Of Lease" was entered into by Defense Plant Corporation, hereinafter referred to as DPC, and Tavares Construction Company, Inc., a corporation, one of the defendants herein, a true copy of which "Agreement of Lease" and the other Agreements amendatory thereof are attached to the Amended Declaration of Taking filed herein under date of December 23, 1944.

4. On November 10, 1942, the Government commenced this action and on the same day obtained an Order for Possession under the Second War Powers Act. One day after the commencement of said condemnation the Government, through its agent DPC, granted the lease and option rights to the defendant, Tavares Construction Company, as set forth in the Amended Lease Agreement of November 11, 1942, heretofore referred to at number 3 of this Statement of Facts.

5. On September 23, 1944, the Government filed an Amendment to its Complaint in Condemnation and on the same day obtained an order for immediate possession in conformity therewith.

6. On October 3, 1944, the Government filed its original Declaration of Taking.

7. On December 20, 1944, the Government filed its Supplemental and Amended Complaint in Condemnation.

8. On December 23, 1944, the Government filed its Amended Declaration of Taking, and decree was duly entered thereon on December 27, 1944.

9. On March 26, 1945, the Court heard and granted defendants' Motion for a Bill of Particulars, at which time counsel for plaintiff submitted for consideration of the Court copy of a letter written by Paul D. Page, Jr., Solicitor for the Maritime Commission, to the United States Attorney General, dated March 19, 1945, which letter was as follows: [222]

"The Honorable  
The Attorney General

Ref: 33-5-924-1

Sir:

Reference is made to your letter of March 19, 1945, in connection with United States v. Certain parcels of land in the City of National City, San Diego County, California, Tavares Construction Co., et al, Civil 248-SD.

In reply to your letter, you are advised that it was and is the intention of the Maritime Commission to acquire in this proceeding full title to the land and all improvements thereon, and thereby to acquire any and all rights in and to said land and improvements other than the rights of the United States or its agent, Defense Plant Corporation.

Respectfully,

Paul D. Page, Jr.  
Solicitor"



10. Pursuant to the hearing aforesaid, the Court ordered the plaintiff to file a Bill of Particulars, and on March 13, 1945, the Government filed its Bill of Particulars, which at line 29, page 1 thereof states:

“the right, title, interest, and estate in and to the lands and all improvements and facilities located thereon described in plaintiff’s Amended and Supplemental Complaint, which by this action plaintiff intends and seeks to take, acquire, condemn, hold, and own, is the fee simple title, including the right, title, interest, or estate, if any, in or to said lands, and all improvements and fixtures located thereon, or in any way appertaining thereto, owned, held, or claimed by said defendants, or either of them, and excepting therefrom only such right, title, interest, or estate in said [223] lands and all improvements and fixtures located thereon, or in any way appertaining thereto, which was vested in the United States of America or its agent, Defense Plant Corporation, at the date of the filing of this action or immediately prior to the filing of the respective Declaration of Taking under the agreements referred to in Paragraph X of the Amended and Supplemental Complaint.”

11. On May 3, 1945, the defendants, Tavares Construction Company, Inc., et al, filed their Answer and Counter-Claim to plaintiff’s Amended and Supplemental Complaint.

12. Subsequent to the entry of the decree on the Amended Declaration of Taking, the Eleventh Naval District by letter dated November 16, 1945, notified the Concrete Ship Construction (being the joint venture of

which Tavares Construction Company, Inc. was a member) as follows:

“COMMANDANT’S OFFICE  
ELEVENTH NAVAL DISTRICT  
San Diego 30, Calif.

16 Nov. 1945

Concrete Ship Constructors  
P. O. Box D, Foot of 13th Street,  
National City, California.

Gentlemen:

As you are aware the Navy Department has authorized the award of certain contracts for the construction of piers to serve the U. S. Naval Repair Base, San Diego. This work will involve the use and possession of certain portions of land now owned by the United States of America and under the jurisdiction of the Maritime Commission as well as lands on which you claim to have a lease.

The Government-owned lands have been declared surplus by the Maritime Commission and it is understood that [224] formal transfer of jurisdiction over the property will be made to the Navy Department within a few days. Insofar as you have any interest in the lands on which your facilities are located the possession of which is necessary to carry out the above referred to contracts, will you please indicate in writing that you have no objection to the Government’s use and occupation of the area necessary?

The Navy Department has also requested that it be informed whether the contemplated construction under the above referred to contracts will interfere with the repair of naval vessels by your company operating under any contracts which you may have with the Bureau of Ships. Will you please furnish information with respect to this matter?

Very truly yours,

R. FOWLER

Executive Assistant .

Public Works Officer

Eleventh Naval District"

13. Under date of November 21, 1945, the defendant, Concrete Ship Constructors, notified the *Eleven* Naval District by letter, as follows:

"November 21, 1945.

"Commandant  
Eleventh Naval District  
San Diego 30, California

Navy Ref: ND11/NB12/L9-3(a)  
(PW)

Dear Sir:

This will acknowledge receipt of your letter dated 16 Nov. 1945 and with reference thereto, please be advised that we have expressed verbally several times that we are willing and ready to assist in the expediting of the Navy's construction program where and whenever possible. [225]

With reference to Paragraph Four of your letter regarding contemplated improvements interfering with repair of Navy vessels, we wish to advise that we are not familiar with the construction details or how another contractor would carry on construction operations. However, we believe the work can be carried on so as to leave a portion of the docks available for ship repair at all times.

This company is under certain obligations to the Defense Plant Corporation and the United States Maritime Commission for the maintenance of and protection of certain facilities located at this yard. We expect the Navy to assume such responsibility insofar as Navy improvements are concerned. We request that the Office in Charge of Contemplated Construction confer with us from time to time to the end that interference with construction activities be cut to a minimum.

You are familiar with the various costs and expenses in connection with the operation of a yard of this magnitude, such as taxes, insurance, plant protection, roads and maintenance and we believe it fair that such costs be prorated in accordance with the yard's use by any others.

Yours truly,

CONCRETE SHIP CONSTRUCTORS

By R. S. Seabrook

Managing Partner"

14. On December 28, 1945, the 11th Naval District notified the defendant, Concrete Ship Constructors, by letter, as follows:

“COMMANDANT’S OFFICE  
ELEVENTH NAVAL DISTRICT  
San Diego, 30, California.

ND11/NB12/NI-13 (u)  
28 December 1945 [226]  
Concrete Ship Constructors,  
P. O. Box D,  
National City, California.

Gentlemen:

In reply to the Commandant’s letter of 16 November 1945 you advised by letter of 21 November 1945 that you had no objections to the use of your yard by the Navy Department and its contractors provided that the Navy Department will agree to bear a pro rata share of the expenses in connection with the operation of the yard which you are obliged to pay by virtue of your lease and facilities contract from the Defense Plant Corporation dated 27 December 1941.

It is the understanding of this office that in the condemnation proceeding entitled “U. S. v. certain parcels of land in the City of National City, California”, Civil 248-SD, your real estate interests in the premises may have been acquired by the Govern-



ment. Until this is clarified, the Navy Department would not be justified in making an unqualified agreement to share expenses which may not be owing by you. Therefore, the only agreement that can be made would be that the Navy Department will bear a share of the expenses if it is later determined that these expenses were necessarily incurred by virtue of your agreement with the Defense Plant Corporation. Will you please advise whether you would be willing to enter into such an agreement as a condition to allowing the use of the yard on which your facilities are erected to carry out present contracts for the construction of facilities to berth ships of the Reserve Fleet?

The Commandant has recommended that the above referred to proceeding be amended to acquire all of your real estate interests in the premises. It is necessary [227] however to know the exact nature of the claims you will make in the proceeding if this course is taken. Will you please therefore advise the items for which you will claim compensation in the proceeding and the amounts thereof?

Very truly yours,

A. K. FOGG

Public Works Officer  
11th Naval District"

15. On December 4, 1945, the 11th Naval District notified defendant, Concrete Ship Constructors, by letter, as follows:

"COMMANDANT'S OFFICE  
ELEVENTH NAVAL DISTRICT  
San Diego 30, California.

ND11/NB12/L9-3(a)

(PW)

4 Dec 1945

Concrete Ship Constructors

Post Office Box D

National City, California

Gentlemen:

Reference is made to your letter of November 21, 1945 regarding proposed construction involving procurement of lands presently used by Concrete Ship Constructors. It appears that some settlement can probably be worked out to the satisfaction of all parties concerned. Your expression of willingness to cooperate and assist in expediting the Navy's construction program is appreciated.

Very truly yours,

A. K. FOGG

Public Works Officer

11th Naval District"

16. On January 10, 1946, the defendant, Tavares Construction Company, Inc., notified Reconstruction Finance Corporation, by [228] letter as follows:

“January 10, 1946

Reconstruction Finance Corporation  
Successors to Defense Plant Corporation  
523 West Sixth Street  
Los Angeles 14, California

Subject: Security Plancor 407

Gentlemen:

In furtherance of our discussion of December 3rd, at your Los Angeles office, at which time we informed you that the Department of Public Works, 11th Naval District, had let contracts for the alterations and additions to shipyard at National City, we wish to set forth additional information.

These contracts provided, among other things, for the use and occupancy by the Navy Contractors of certain areas within the shipyard site for construction purposes; the demolition of the pier, a portion of the warehouse building and other building; the dredging of the mole to the bulkhead line; the reconstruction of the quay wall throughout the entire length of the property; and other alterations. We wish you to know that we are no longer able to protect this property, for it has been opened for use to others whose numbers will be far in excess of the numbers employed by this company.

Yours truly,

TAVARES CONSTRUCTION CO. Inc.

By R. S. Seabrook”

17. On March 20, 1946, Defense Plant Corporation delivered to defendant a copy of telegram, as follows:

To: Mr. Duncan, Defense Plant Corporation, San Diego, California.

From: Engineering Division, Defense Plant Corporation, Los Angeles, California. [229]

RE PLANCOR 407 TAVARES CONSTRUCTION COMPANY ALL FACILITIES WERE CONVEYED TO THE NAVY DEPARTMENT BY AGREEMENT OF TRANSFER AND INDEMNITY ENTERED INTO BY THE NAVY DEPARTMENT, MARITIME COMMISSION AND THIS CORPORATION UNDER DATE OF MARCH 1, 1946. SAID AGREEMENT PROVIDED THAT EFFECTIVE AS OF MIDNIGHT OF JANUARY 1, 1946, THAT TRANSFER OF THE FACILITIES TO THE NAVY DEPARTMENT BECOMES EFFECTIVE. ANY RIGHTS UNDER THE AGREEMENT OF LEASE WITH TAVARES CONSTRUCTION COMPANY WHICH MIGHT HAVE BEEN EXERCISED BY THIS CORPORATION WERE VESTED IN THE NAVY DEPARTMENT EFFECTIVE AS OF JANUARY 1, 1946. THE NAVY DEPARTMENT HAS INSTRUCTED ITS REPRESENTATIVES TO COOPERATE WITH YOUR STAFF ON THE INVENTORY BEING TAKEN IN CONNECTION WITH THE PLANCOR.

ENGINEERING DIVISION  
DEFENSE PLANT CORPORATION."

18. On April 16, 1946, defendant was delivered copy of telegram from the Navy Department to counsel for plaintiff, as follows:

“SAN DIEGO CALIF APR 16 1946 719P

JOE MCPHERSON

SPECIAL ASST. TO ATTORNEY GENERAL

THIS BUREAU WILL NOT AUTHORIZE PAYMENT OF ANY TAXES ON PROPERTY OCCUPIED BY TAVARES CONSTRUCTION COMPANY CIVIL 248 SD. AMENDED DECLARATION OF TAKING FILED DECEMBER TWENTY THREE NINETEEN HUNDRED FORTY FOUR INCLUDED A DEPOSIT OF FIFTY FIVE THOUSAND ONE HUNDRED AND TEN DOLLARS FOR PARCEL ONE. UNDER AGREEMENT OF TRANSFER AND INDEMNITY RFC AND MARITIME COMMISSION TRANSFERRED ALL RIGHT TITLE AND INTEREST TO PROPERTY INCLUDED IN PLANCOR FOUR HUNDRED SEVEN TO THE NAV EFFECTIVE ONE JANUARY NINETEEN FORTY SIX. COPY OF AGREEMENT BEING FORWARDED TO COMMANDANT ELEVENTH NAVAL DISTRICT

BUREAU OF YARDS AND DOCKS NAVY  
DEPT WASH DC.” [230]



19. On August 5, 1946, defendant notified Eleventh Naval District by letter as follows:

“August 5, 1946

A. K. Fogg, Captain (CEC), U.S.N.  
Officer-in-Charge of Construction Contracts,  
Eleventh Naval District,  
Naval Operating Base,  
San Diego, California.

Dear Sir:

Reference is made to your recent verbal request to Concrete Ship Constructors (of which Tavares Construction Company, Inc. is a member) to submit a bid to the Navy for the performance of the work of filling in Drydocks No. 1 and No. 2 on the property located in National City, now under lease to Tavares Construction Company, Inc. pursuant to that certain lease dated December 27, 1941, and amendments thereto, between Defense Plant Corporation, as lessor, and Tavares Construction Company, as lessee, known as Plancor 407.

We regret to advise that Concrete Ship Constructors is unwilling to submit such a bid, as the filling in of these drydocks is contrary to the best interests of Concrete Ship Constructors and Tavares Construction Company, Inc.

For your information, Tavares Construction Company, Inc. holds an option to purchase all of the site, facilities and machinery which it installed upon the leased premises pursuant to the terms of said Plancor 407. The two drydocks on which you request Concrete Ship Constructors to submit a bid for the

work of filling in are a part of these facilities. We most virorously protest the destruction of these two drydocks.

We object to the destruction, alteration or other damaging of any part or portion of the site, facilities [231] and machinery that is the subject of our option to purchase under Plancor 407.

Very truly yours,

TAVARES CONSTRUCTION  
COMPANY, INC.”

20. On August 8, 1946, Reconstruction Finance Corporation advised defendant by letter as follows:

“RECONSTRUCTION FINANCE  
CORPORATION

Office of Defense Plants  
523 West Sixth St.  
Los Angeles, 14, Calif.  
Michigan 6321

August 8, 1946

Tavares Construction Company,  
National City,  
California

Attention: Gregory D. Smith, Administrative  
Manager

Re: Plancor 407

Dear Sirs:

By an agreement of transfer and indemnity dated March 1, 1946, all rights, title and interest of this Corporation under the lease agreement dated December 27, 1941, as amended, with your company

was transferred to the U. S. Navy Department effective as of midnight January 1, 1946.

To complete our files, we shall appreciate receiving your statement in duplicate that all insurance premiums and taxes applicable to the property under lease from the inception of the lease agreement, December 27, 1941, through January 1, 1946, have been or will be paid.

We shall appreciate, also, your statement as to use of the facilities for repair of ships for parties other than the Government subsequent to January 31, 1945, accompanied by remittance covering rental due, if any, as confirmed by letter addressed to you February 14, 1945, by H. P. Jenkins, Assistant Chief, Leased Plants Division, [232] Washington.

Very truly yours,

Anthony Drozda, Supervisor  
Plant Servicing Section"

21. On September 5, 1946, the Secretary of the Navy notified the defendant by letter dated September 3, 1946, as follows:

"Tavares Construction Company, Inc.  
National City, California

Sirs:

Reference is made to that certain "Agreement of Lease," designated as D.P.C. Plancor No. 407 made and entered into on December 27, 1941, by and between the Defense Plant Corporation and Tavares Construction Company, Inc., and the various amendments thereto.

In accordance with the terms of paragraph 26 of Plancor 407 the United States Maritime Commission, the Reconstruction Finance Corporation as successor to the Defense plant Corporation, and the Navy Department entered into an Agreement of Transfer and Indemnity on March 1, 1946, wherein the Navy Department succeeded to all the rights, powers, privileges, discretions and obligations of the Defense Plant Corporation and the U. S. Maritime Commission under Plancor 407. The effective date of the Agreement of Transfer and Indemnity was January 1, 1946.

In accordance with the provisions of paragraph 12 of Plancor 407, which provides that at any time when substantial use by the lessee of the site, facilities and machinery shall be no longer required to enable lessee to construct boats for the Government, the Defense Plant Corporation may, with the written approval of the Maritime Commission, give written notice to the lessor that such substantial use is no longer required and that the Defense Plant Corporation therefore proposes the [233] termination of the lease, or extension thereof, notice is hereby given to you that the Navy Department elects to terminate Plancor 407 and any extensions thereof.

A permit will be issued to you to allow for the completion of any ship repair contracts currently in effect between you and the Bureau of Ships of the Navy Department.

Very truly yours,

WILLIS R. DUDLEY

By direction of the Chief of the Bureau  
of Yards and Docks, acting under the  
direction of the Secretary of the Navy"

22. On September 12, 1946, the 11th Naval District notified the defendant by letter, as follows:

“COMMANDANT’S OFFICE  
ELEVENTH NAVAL DISTRICT  
San Diego 30, Calif.

ND11/NB12/NI-13(3)

12 September 1946

Tavares Construction Company, Inc.,  
National City,  
California

Gentlemen:

It is noted from Bureau of Yards and Docks’ letter of 3 September 1946 that the Navy Department has elected to terminate Plancor No. 407 with your company. It is accordingly, requested that you remove the materials and equipment belonging to your company except such as may be necessary for your current contracts with the Navy. It is believed that a terminal date of November 1 will be sufficient for you to accomplish this. In the event that this date is inadequate, it is requested that you suggest one. The purpose in setting such a date is to permit the Navy to move in on the site and clean up and dispose of any materials or equipment that may be considered to have been abandoned by your company. [234]

Very truly yours,

A. K. FOGG

Public Works Officer  
11th Naval District”



23. On September 13, 1946, the defendant made written demand upon plaintiff by letter, as follows:

“September 13, 1946

To Chief of the Bureau of Yards and Docks,  
Navy Department,  
Washington, D. C.

To United States Maritime Commission,  
Commerce Building,  
Washington, D. C.

To Reconstruction Finance Corporation  
as successor to Defense Plant Corporation  
Office of Defense Plants,  
523 West Sixth Street,  
Los Angeles, 14, California.

Attention: Mr. Willis R. Dudley,  
Bureau of Yards and Docks

Subject: Termination of D.P.G.  
Plancor 407

Reference: ND11/NI-13  
T5-13-SD(MC)  
F-5-3/WWB:mr

Sirs:

We are in receipt of your notice dated 3 September 1946 that the Navy Department, as successor to all of the rights and obligations of Defense Plant Corporation and the United States Maritime Commission, elects to terminate DPC Plancor 407 and any extensions thereof.

This notice was received on 5 September 1946. We understand that this is the ten day notice of

termination provided for in Paragraph Twelve of Plancor 407, being the Agreement of Lease dated December 27, 1941 and amendments thereto, between Defense Plant Corporation, as Lessor, and Tavares Construction Company, Inc., as Lessee.

We direct your attention to Paragraph Fifteen of Plancor 407 as amended by Paragraph Thirty-one added by amendatory #5, dated November 11, 1942, which grants [235] to Tavares Construction Company, Inc., upon termination of the lease under Paragraph Twelve, the right and option for a period of ninety days after such termination, to purchase the site, facilities and machinery. Tavares Construction Company, Inc., believes that it is entitled to know for the full ninety day option period the exact amount of the option price.

Demand is hereby made upon you and each of you that Tavares Construction Company, Inc., be immediately advised of the following:

1. The exact amount of the purchase price and the details of the calculation thereof under subparagraph (a) of paragraph Fifteen of Plancor 407 and amendments.
2. The exact amount of the purchase price and the details of the calculation thereof under subparagraph (b) of paragraph Fifteen of Plancor 407 and amendments.

We wish to call attention to the fact that a substantial portion of the facilities have been and are being destroyed by the Navy Department without our consent. Please advise as to what credit the

Government proposes to allow on the purchase price by reason of such destruction.

We wish to further call attention to the fact that the Navy Department has constructed substantial improvements on the site without our consent. We request specific information as to whether the Government proposes to add the cost thereof to our option price.

In order for us to intelligently elect as to the exercise of our option it is necessary that we know the exact option price. Also we feel that we are entitled to have the full ninety-day period after the receipt of [236] this information within which to elect.

Kindly let us have your prompt reply.

Very truly yours,

TAVARES CONSTRUCTION  
COMPANY, INC.

Carlos Tavares

Carlos Tavares, President."

24. Except for this action and the Declaration of Taking herein filed and the Orders and Decrees heretofore entered in this action, and the Secretary of the Navy's letter dated September 3, 1946 above set forth at Paragraph 21 hereof, the defendant Tavares Construction Company, Inc., at all times herein mentioned has been and now is entitled to the possession and right to purchase all of the site, facilities and machinery in accordance with the terms and provisions of Paragraph Fifteen of the Agreement of Lease of December 27, 1941, as amended.

25. Subsequent to the entry of the decree on the Declaration of Taking above referred to, the Government, acting through its Navy Department, has taken physical possession of a major portion of the site and the facilities above referred to, and has proceeded not only to deprive said defendants of possession thereof, but have removed and destroyed approximately one-third more or less of the improvements and facilities erected upon the site by the defendants under the terms of the aforesaid Lease Agreement.

26. Tavares Construction Company, Inc. has heretofore furnished or constructed all of the improvements, facilities and machinery on said site for DPC as required by the terms of its lease, at a total cost to DPC of approximately \$2,700,000.

27. Tavares Construction Company, Inc. has paid as rental to DPC for the use of said site, facilities and machinery, in accordance with the terms of said lease, a total sum in excess of \$2,700,000.

28. Tavares Construction Company, Inc. has paid, for the benefit of DPC and in conformity with the terms of its lease, all taxes, [237] insurance premiums and maintenance charges on said site, facilities and machinery.

29. All of the aforesaid improvements, facilities and machinery were so furnished or constructed by Tavares Construction Company, Inc. without any compensation or fee for its supervisory services in connection therewith other than the compensation represented by the granting by DPC to said defendant, Tavares Construction Company, Inc., of the option to purchase all but not part of said site, facilities and machinery as set forth at Paragraph Fifteen of the Lease Agreement.

30. The Navy has awarded contracts for additions to said shipyard site, which as of September 21, 1946, total approximately \$4,573,650, upon which contracts the defendant estimates expenditures to September 21, 1946, to be approximately \$3,176,790.

31. The physical destruction by the Navy of the improvements and facilities as aforesaid, has substantially diminished the value of the property and option rights of the defendant.

32. The foregoing Stipulation of Facts are as presently understood. If any or either of them are found to be untrue, inaccurate or incomplete, the truth with respect thereto or as to any other material fact may be asserted

~~entered~~ and proven notwithstanding this Stipulation.

Dated: September 26, 1946.

UNITED STATES OF AMERICA

By Joseph F. McPherson

Special Assistant to the Attorney General

Attorney for Plaintiff

JOHN M. MARTIN

FRANK L. MARTIN, JR.

CHARLES C. CROUCH, and

GEORGE W. CROUCH

By John M. Martin

Attorneys for Defendants, Tavares Construction  
Company, Inc., et al.

[Endorsed]: Filed Sep. 27, 1946. Edmund L. Smith,  
Clerk. [238]



[Title of District Court and Cause]

JOINT MEMORANDUM OF COUNSEL ON  
PRETRIAL

On December 27, 1941, Tavares Construction Company (one of the joint adventurers in Concrete Ship Constructors), being then the assignee of a lease on what is known in the suit as Parcel 1, assigned its lease thereon to and subleased said parcel from Defense Plant Corporation, undertaking to construct and erect thereon, for the account of the Defense Plant Corporation, the facilities necessary for use in the construction of certain ships then being built by the Concrete Ship Constructors under contract with the Maritime Commission.

The "Agreement of Lease." dated December 27, 1941, which together with its amendments and supplements established the relationship as to the site and facilities, contemplated the absorption of the cost of the facilities by approximately equal amortization thereof over the ships being constructed thereon for the Maritime Commission, the covenants of the "Agreement of Lease" retaining the personal aspects of [239] the facilities as between Defense Plant Corporation and Tavares Construction Company and providing for the construction and installation of such facilities without profit to the contractor.

The "Agreement of Lease" also contains express provisions for its cancellation for cause, in the event of completion of the shipbuilding contracts, claimed priority of other departments than the Maritime Commission or

the Defense Plant Corporation, and for other causes and reasons not here material. Paragraph 15 of the instrument provides:

“Fifteen: Upon the expiration or termination of this lease or extension thereof pursuant to paragraph Twelve hereof, or upon cancellation of this lease or extension thereof pursuant to clause (a) of paragraph Fourteen hereof (unless such cancellation shall have been effected because of a violation by Lessee of the contracts referred to in said clause (a)), Lessee shall have and is hereby granted, for a period of ninety (90) days after such termination, expiration, or cancellation (hereinafter referred to as the “Option Period”) the right and option, by written notice to Defense Plant Corporation and to the Maritime Commission, to purchase all but not part of the Site, Facilities and Machinery at the following prices:” (The method of determining the amount of the option price, being immaterial, is omitted.)

The clause further provides:

“Defense Corporation further agrees, to the extent that it lawfully may, that it will not sell the Facilities and Machinery, or any part thereof, to any party or parties other than another branch of the Government (in which event such sale shall be in all respects subject to paragraph Twenty-six hereof) for a period of ninety (90) days following the expiration of the full Option Period unless it shall first have

offered the same for sale to Lessee at a price equal to the best offer received by Defense Corporation and Lessee shall [240] have failed or refused to purchase the same within thirty (30) days after the receipt of such offer."

Thereafter, and from time to time, the construction of additional ships contracted for by the Maritime Commission required enlargement of the site and the construction of additional facilities. These were provided for by simple amendments altering the amount Defense Plant Corporation should be required to expend for such installations and adjusting the amount of amortization applicable to each ship built by the use thereof. Amendment No. 5, dated November 11, 1942 (one day after the filing of the condemnation proceeding), recites that the Government is proceeding to acquire additional land to be used as a part of the "site for the facilities", and further:

"Whereas, upon acquisition of title to such additional land by the Government the Maritime Commission has indicated that it will cause the same to be conveyed to Defense Corporation upon receipt of payment of the cost thereof.

"Lessee further agrees that in the event the property leased to Lessee under said Agreement of Lease, as amended, should be transferred to another branch of the Government pursuant to paragraph Twenty-six thereof prior to the acquisition by Defense Corporation of title to that part of the Site now being condemned by the Government, Lessee will, if it should thereafter elect to exercise the option to purchase conferred by paragraph Fifteen of said Agreement

of Lease, as amended, pay to the Government the cost to it of such part of the Site on the same basis as if such cost had been part of the cost to Defense Corporation of the property leased to Lessee under said Agreement of Lease, as amended."

On December 20, 1944, the Amended and Supplemental Complaint in Condemnation was filed. A dispute arose as to the scope of the taking, and on March 26, 1945, Tavares Construction Company moved this court for a Bill of Particulars (see paragraph C, pages 2 and 3 of Motion to [241] Make More Definite, to the effect that Tavares could not determine from the Amended and Supplemental Complaint whether the plaintiff was also condemning its leasehold and option rights and, if so, to what extent).

On March 26, 1945, motion for Bill of Particulars was heard before the late Judge Hollzer, at which hearing there was read into the record the letter from Paul Page, copied at length on page 3 of the Stipulation of Facts filed herein on September 26, 1946. The motion for Bill of Particulars was granted.

On April 13, 1945, a Bill of Particulars was filed, which, though improperly dated, is copied in full in paragraph numbered 10 on page 3 of the Stipulation of Facts filed herein on September 26, 1946.

At or near the completion by Concrete Ship Constructors of its shipbuilding contracts with the Maritime Commission, with the knowledge and consent of Defense Plant Corporation and the Maritime Commission, Tavares Construction Company commenced ship repair and alteration work on the site in question for its own private account,

and also undertook to and did repair at such site a number of naval vessels of the United States.

On numerous occasions during the use of the site for ship repair purposes as above indicated, agreements were made from time to time between the Navy Department and Tavares Construction Company, resulting in restricted use of the site facilities and improvements by the Tavares Construction Company and providing for joint use thereof with the Navy Department. All such restrictions, however, as were made by the Navy Department upon the use of such facilities and improvements, or providing for the joint use thereof, have been pursuant to and by virtue of the separate agreements between that department and the Tavares Construction Company, except that the Tavares Construction Company has not agreed to and does not consent to the destruction or removal of any of the facilities and improvements, and asserts that its agreements to such restricted use and such joint use were in each instance made in reliance upon its interpretation of the Bill of Particulars and in light of Federal Rule of Civil Procedure No. 12-E. [242]

The issues to be determined by the court as upon pretrial are:

(a) Have the lease and option rights of Tavares Construction Company, granted under the "Agreement of Lease" dated December 27, 1941, and by the supplements thereto, been taken and condemned by this action?



(b) Does the defendant, Tavares Construction Company, have a compensable interest in the property taken by the condemnation proceeding?

The foregoing Joint Memorandum of Counsel is based upon the Stipulation of Facts heretofore filed and their understanding of such additional facts as are recited herein. If any or either of them are found to be untrue, inaccurate or incomplete, the truth with respect thereto or as to any other material fact may be asserted and proven notwithstanding this joint memorandum.

Dated: October 4, 1946.

UNITED STATES OF AMERICA  
JAMES M. CARTER

United States Attorney

By Joseph F. McPherson

Special Assistant to the Attorney General

Attorneys for Plaintiff

JOHN M. MARTIN

FRANK L. MARTIN, JR.

CHARLES C. CROUCH, and

GEORGE W. CROUCH

By John M. Martin

Attorneys for Defendants, Tavares Construction  
Company, Inc., et al.

[Endorsed]: Filed Oct. 4, 1946. Edmund L. Smith,  
Clerk. [243]

[Title of District Court and Cause]

Honorable Leon R. Yankwich, Judge

RULING ON PRE-TRIAL HEARING AS TO THE  
INTEREST OF TAVARES CONSTRUCTION  
COMPANY, INC.

The Court having considered upon pre-trial the matters heretofore submitted on September 30, 1946, calling for the determination of the nature of the interest of Tavares Construction Company, Inc., involved in this proceeding, does now, after consideration of the record and the joint stipulation filed on September 27, 1946, and the additional memorandum filed on October 4, 1946, and the argument of counsel, determine the said matters as follows:

The Court answers the two questions propounded to it which sum up the findings desired in the following manner:

“(a) Have the lease and option rights of Tavares Construction Company, granted under the ‘Agreement of Lease’ dated December 27, 1941, and by the supplements thereto, been taken and condemned by this action?” [244]

The Court answers affirmatively.

“(b) Does the defendant, Tavares Construction Company, have a compensable interest in the property taken by the condemnation proceeding?”

The Court answers affirmatively.

The Court orders specific findings entered in accordance with such answers.

Because of the urgency in the matter and because of my absence from the Central Division, I hereby indicate briefly to counsel the grounds of decision as a guide in the preparation of the formal order.

I am satisfied that the pleadings on file, including the Bill of Particulars, which must be considered as an amendment to the Government's amended Complaint, the contemporaneous and the present understanding of the original lessor and its successors, as well as of those connected with the "taking" agency, disclose an intention to condemn all the interests of Tavares Construction Company acquired under the "Agreement of Lease" dated December 27, 1941. It is inconceivable that men high in Governmental station, including high executive officers of the Navy, would take the position that they can command the Construction Company at will and destroy facilities upon its subleased premises, unless thoroughly convinced, by the record, that it is the intention of this condemnation proceeding to terminate whatever interest the Construction Company had. There are numerous statements, referred to in the stipulation, which show that the various Governmental agencies were expressing not only their own interpretation of what was being done, but that of highly trained legal executives. And this interpretation is borne out by the facts referred to and is sound in law. (*United States v. Sunset Cemetery Co.*, 1943, [245] 7 Cir., 132 F. (2) 163.)

This conclusion makes it unnecessary to determine, as an abstract proposition, whether an option to buy is compensable. For here we have not a "naked" option to buy, but an interest in a sublease, coupled with option rights. And the interest in the sublease, with or without option rights, is compensable. The existence of the option is a matter to be considered by experts in determining the value of the property taken. And that is a question of fact to be determined at the trial. (See, *United States v. Sunset Cemetery Co.*, supra; *Brooklyn Eastern Dist. Terminal v. City of New York*, 1944, 2 Cir., 139 F. (2) 1006; *Westchester County Park Commission v. United States*, 1944, 2 Cir., 143 F. (2) 688. These decisions are in the spirit of the guide posts laid down in *Brooks-Scanlon Corporation v. United States*, 1924, 265 U. S. 106.)

Counsel will prepare a formal pre-trial order embodying these conclusions and so much of the facts as they desire to incorporate in it from the Agreed Statement and the Memorandum, either by reference or directly.

Dated this 10th day of October, 1946.

LEON R. YANKWICH

Judge

[Endorsed]: Filed Oct. 10, 1946. Edmund L. Smith,  
Clerk. [246]

[Title of District Court and Cause]

### ORDER UPON PRETRIAL

The Court, having considered upon pretrial the matters heretofore submitted on September 30, 1946, calling for the determination of the nature of the interest of Tavares Construction Company, Inc., involved in this proceeding, does now, after consideration of the record and the joint stipulation filed on September 27, 1946, and the additional memorandum filed on October 4, 1946 and the argument of counsel, determine:

(1) That the lease and option rights of Tavares Construction Company, Inc., granted under the "Agreement of Lease," dated December 27, 1941, and by the supplements thereto, have been taken and condemned by this action.

(2) That the defendant Tavares Construction Company, Inc., has a compensable interest in the property taken by this proceeding.

(3) That the facts are as set forth in the joint stipulation and joint memorandum of counsel above referred to and the Court's written opinion filed herein on October 10, 1946.

Dated: This 5th day of February, 1947.

LEON R. YANKWICH

United States District Judge

[Endorsed]: Filed Feb. 5, 1947. Edmund L. Smith,  
Clerk. [247]



In the District Court of the United States in and for the  
Southern District of California  
Southern Division

No. 248-SD Civil

UNITED STATES OF AMERICA,

Plaintiff,

v.

CERTAIN PARCELS OF LAND IN THE CITY OF  
NATIONAL CITY, COUNTY OF SAN DIEGO,  
STATE OF CALIFORNIA; TAVARES CON-  
STRUCTION COMPANY, et al.,

Defendants.

### JUDGMENT UPON THE VERDICT

The within action came on regularly for trial before the above-entitled court, the Honorable Paul J. McCormick, Judge presiding, sitting with a jury, on February 17, 1947, for determination and adjudication of the just compensation to be paid for the condemnation and taking of the real property hereinafter described and referred to as Parcels 1, 2, 3, 5, 6, 7, 8, 9 and A, and for the condemnation and taking of the interests of Tavares Construction Company, Inc., a corporation, Concrete Ship Constructors, a joint venture, Lloyd S. Stroud, R. S. Seabrook, Stroud-Seabrook, a copartnership, C. M. Elliott, Carlos Tavares, Henry M. Page and Don F. Gates, in and to the real property described in plaintiff's Amended and Supplemental Complaint in Condemnation and hereinafter described, and all improvements, facilities and fixtures located thereon, and the option, leasehold and possessory rights of said defendants arising out of

or by virtue of that certain lease and agreement dated December 27, 1941, between Defense Plant Corporation and Tavares Construction Company, Inc., as amended (commonly known as Plancor 407, as [249] amended); said trial being had upon plaintiff's Amended and Supplemental Complaint in Condemnation and the Answer of defendants Carl A. Johnson and Pearl Johnson, the Second Amended Answer of defendant City of National City, the Answer, Counter-claim and Cross-claim of defendants Tavares Construction Company, Inc., Concrete Ship Constructors, a joint venture, Lloyd S. Stroud, R. S. Seabrook, Stroud-Seabrook, a copartnership, C. M. Elliott, Carlos Tavares, Henry M. Page and Don F. Gates, the Answer of defendant San Francisco Bridge Company, a corporation, the Answer of defendant Leonard McLauchlan, the Answer of defendant State of California, and the Answer of defendant County of San Diego; and

Plaintiff appearing by and through its attorneys of record, C. U. Landrum, Special Assistant to the Attorney General, and Robert G. Berrey, Special Attorney, and defendants Carl A. Johnson and Pearl Johnson appearing by and through their attorney, Hunter M. Muir, defendant City of National City appearing by and through its attorneys, Monroe & McInnis, Jean Daze Ratello, and Campbell & Campbell, defendants Tavares Construction Company, Inc., Concrete Ship Constructors, Lloyd S. Stroud, R. S. Seabrook, Stroud-Seabrook, C. M. Elliott, Carlos Tavares, Henry M. Page and Don F. Gates, appearing by and through their attorneys, John M. Martin, Frank L. Martin, Jr., and Charles C. Crouch, defendant San Francisco Bridge Company appearing by and through its attorney, G. H. Sloane, defendant Leonard McLauchlan appearing in propria persona, defendant State of

California appearing by and through its attorneys L. G. Campbell and John F. Hasslen, Jr., Deputies Attorney General, and defendant County of San Diego appearing by and through its attorney, Duane J. Carnes, Deputy District Attorney; and

Thereupon, evidence both oral and documentary having been introduced by and on behalf of plaintiff and said defendants upon the issues before the court and jury, including the issue of the just compensation and the fair market value of Parcels 1, 2, 3, 5, 6, 7, 8, 9 and A, and the right, title and interest of defendants Tavares Construction Company, Inc., Concrete Ship Constructors, Lloyd S. Stroud, R. S. Seabrook, [250] Stroud-Seabrook, C. M. Elliott, Carlos Tavares, Henry M. Page and Don F. Gates, in and to Parcels 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and A herein, and all improvements, facilities and fixtures located thereon, and the option, leasehold and possessory rights granted said last named defendants, or any of them, by the aforesaid lease and agreement dated December 27, 1941, as amended, and the jury having heard and deliberated upon the evidence and having reported to the court its Verdict; and

Defendants City of National City and Leonard McLauchlan having stipulated that the sum of Forty Dollars (\$40.00) is the just compensation for the interest of said defendant Leonard McLauchlan in and to said Parcel 8, and that said sum be paid to defendant Leonard McLauchlan out of the award to defendant City of National City in full payment of all his right, title and interest in and to said parcel 8; and defendants Carl A. Johnson and Pearl Johnson and defendant County of San Diego having stipulated that Forty-Five Dollars and Ninety-Nine Cents (\$45.99) is the amount of defendant County of

San Diego's lien for taxes against Parcel 9; and defendant State of California having stipulated with defendant City of National City to accept the sum of One Dollar (\$1.00) in full satisfaction of its rights, title, and interest in and to said Parcels 1, 2, 3, 5, 6, 7, 8 and A; and the court, being fully advised in the premises, finds:

### I.

That as to the said Parcels 1, 2, 3, 5, 6, 7, 8, 9 and A and any and all right, title and interest of defendants Tavares Construction Company, Inc., Concrete Ship Constructors, Lloyd S. Stroud, R. S. Seabrook, Stroud-Seabrook, C. M. Elliott, Carlos Tavares, Henry M. Page and Don F. Gates, in and to Parcels 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and A, hereinafter described, and all improvements, facilities and fixtures thereon, and the option, leasehold and possessory rights granted said last named defendants, or any of them, by that certain lease and agreement dated December 27, 1941, between Defense Plant Corporation and Tavares Construction Company, Inc., a corporation, as amended (commonly known as [251] Plancor 407, as amended), the allegations contained in Paragraphs I, II, III, VI, VII, VIII, IX, X and XII of plaintiff's Amended and Supplemental Complaint in Condemnation are, and each of said allegations is, true.

### II.

That in the Declaration of Taking No. 1 filed herein on October 3, 1944, there was included the real property designated as Parcels 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and A, which is hereinafter more particularly described, and that contemporaneously with the filing of said Declaration Taking No. 1 plaintiff deposited in the Registry of this

Court a sum of money as the estimated just compensation for the condemnation and taking of said parcels, which sum of money included the sum of One Hundred Six Thousand Two Hundred and Forty Dollars (\$106,240.00) as the estimated just compensation for the taking of Parcels 2, 3, 5, 6, 7, 8 and A, and the sum of Twenty-One Hundred Dollars (\$2100.00) as the estimated just compensation for the taking of said Parcel 9.

### III.

That on October 3, 1944, by Decree on Declaration of Taking No. 1, pursuant to the provisions of Title 40, Sec. 248a, et seq., of United States Code, entered on said date by the Honorable Paul J. McCormick, one of the judges of the above-entitled court, the lands set forth and described in said Declaration of Taking No. 1, and the whole thereof, including the said Parcels 2, 3, 5, 6, 7, 8, 9, 10, 11 and A, hereinafter more particularly described, and the fee simple title thereto, as modified by the language of said Declaration of Taking No. 1, was declared to be and was condemned and taken for the use of the United States of America.

### IV.

That on December 23, 1944, there was filed herein an Amended Declaration of Taking, which included the real property designated as Parcels 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and A, which are hereinafter more particularly described; that the estimated just compensation for the taking of said Parcels 1, 2, 3, 5, 6, 7, 8 and A, as shown by said [252] Amended Declaration of Taking, is the sum of One Hundred Sixty-One Thousand Three Hundred and Fifty Dollars (\$161,350.00), and the estimated just compensation for the taking of Parcel 9, as shown by



said Amended Declaration of Taking, is the sum of Twenty-One Hundred Dollars (\$2100.00); and that contemporaneously with the filing of said Amended Declaration of Taking plaintiff deposited in the Registry of this Court as the estimated just compensation for the taking of Parcel 1 the sum of Fifty-Five Thousand One Hundred and Ten Dollars (\$55,110.00).

#### V.

That on December 27, 1941, by Decree on Amended Declaration of Taking, pursuant to the provisions of Title 40, Sec. 258a, et seq., of United States Code, entered on said date by the Honorable Paul J. McCormick, one of the judges of the above-entitled court, the lands set forth and described in said Amended Declaration of Taking, and the whole thereof, including Parcels 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and A, hereinafter more particularly described, and the fee simple title thereto, excepting, however, all of the right, title and interest of the United States of America, or its agent, Defense Plant Corporation, in and to said real estate, including all improvements, facilities and fixtures located thereon, or in any way appertaining thereto which had theretofore vested in the United States of America, or its agent, Defense Plant Corporation, by virtue of the instruments enumerated in and attached to said Amended Declaration of Taking, was declared to be condemned and taken for the use of the United States of America.

#### VI.

That on the eighth day of April 1947 there was filed herein Amendment No. 1 to the Amended Declaration of Taking and simultaneously therewith the amount of \$150,473.00 was deposited as additional estimated com-

pensation, which amount when added to the amount deposited with the Declaration of Taking and the Amended Declaration of Taking increased the estimated compensation of Parcels 1, 2, 3, 5, 6, 7, 8, and A to \$310,475.00 and for Parcel 9 to \$3,448.00; and that on the eighth day of [253] April 1947 the Court entered its decree on said Amendment No. 1 to the Amended Declaration of Taking confirming the deposit of said money.

## VII.

That plaintiff, by its Declaration of Taking No. 1, filed herein on October 3, 1944, its Amended Declaration of Taking filed herein on December 23, 1944, its Amended and Supplemental Complaint in Condemnation herein, and its Bill of Particulars filed herein on April 16, 1945, which Bill of Particulars is considered as an amendment to plaintiff's Amended and Supplemental Complaint in Condemnation, has taken and condemned all of the interests of defendants Tavares Construction Company, Inc., Concrete Ship Constructors, Lloyd S. Stroud, R. S. Seabrook, Stroud-Seabrook, C. M. Elliott, Carlos Tavares, Henry M. Page and Don F. Gates, in and to the real property designated as Parcels 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and A, and hereinafter described, and all improvements, facilities and fixtures located thereon, and the option, leasehold and possessory rights granted to said last named defendants, or any of them, by that certain lease and agreement dated December 27, 1941, between Defense Plant Corporation, and Tavares Construction Company, Inc., as amended (commonly known as Plancor 407, as amended).

## VIII.

That at the time of the taking by plaintiff of the real property described and designated herein, and in said Declaration of Taking No. 1, Amended Declaration of Taking and Amended and Supplemental Complaint in Condemnation, as Parcel 9, and prior to being divested of title thereto, defendants Carl A. Johnson and Pearl Johnson, husband and wife, were the owners of said real property, and that no other person or persons have or then had any right, title, interest or estate in or to said Parcel 9, or any portion thereof, except defendant County of San Diego; that the interest of said defendant County of San Diego was a lien for County taxes. [254]

## IX.

That at the time of the taking by plaintiff of the real property described and designated herein, and in said Declaration of Taking No. 1, Amended Declaration of Taking, and Amended and Supplemental Complaint in Condemnation, as Parcels 1, 2, 3, 5, 6, 7, 8 and A, and prior to being divested of title thereto, defendant City of National City was the owner of said real property, and that no other person or persons have or then had any right, title, interest, or estate in or to said real property, or any portion thereof, except the defendant San Francisco Bridge Company, a corporation, defendant Leonard McLauchlan, defendant State of California, and plaintiff, United States of America; that the interest of said San Francisco Bridge Company in and to said real property consisted of a lease from defendant City of National City covering the real property designated as Parcel 7 and a portion of the real property designated as Parcel A; that the interest of defendant Leonard McLauchlan in and to said real property consisted of a lease from de-

fendant City of National City covering Parcel 8; that the interest of defendant State of California was a reversionary interest; that the interest of plaintiff, United States of America, was that of assignee of certain leases from defendant City of National City, lessor, to defendant Tavares Construction Company, Inc., lessee.

## X.

That prior to December 23, 1944, defendant Tavares Construction Company, Inc., was the lessee of the real property designated as Parcels 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and A and described in plaintiff's Declaration of Taking No. 1, Amended Declaration of Taking and Amended and Supplemental Complaint in Condemnation, and hereinafter described, together with all improvements, facilities and fixtures located thereon, under that certain lease and agreement dated December 27, 1941, between Defense Plant Corporation, an agency of plaintiff, and Tavares Construction Company, Inc., as amended (commonly known as Plancor 407, as amended), which lease and agreement also granted to defendant Tavares [255] Construction Company, Inc. certain option rights to purchase said real property, together with said improvements, facilities and fixtures, and that no other person or persons have or then had any right, title, interest or estate in and to said lease and agreement except the defendants Concrete Ship Constructors, Lloyd S. Stroud, R. S. Seabrook, Stroud-Seabrook, C. M. Elliott, Carlos Tavares, Henry M. Page and Don F. Gates.

## XI.

That the jury returned its Verdict herein, finding the just compensation for the condemnation and taking of Parcels 1, 2, 3, 5, 6, 7, 8, 9 and A and the just compensation for the condemnation and taking by plaintiff of all right, title and interest of defendants Tavares Construction Company, Inc., Concrete Ship Constructors, Lloyd S. Stroud, R. S. Seabrook, Stroud-Seabrook, C. M. Elliott, Carlos Tavares, Henry M. Page and Don F. Gates, in and to the real property designated as Parcels 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and A and hereinafter described, and all improvements, facilities and fixtures located thereon, and the option, leasehold and possessory rights granted to said last named defendants, or any of them, by that certain lease and agreement dated December 27, 1941, between Defense Plant Corporation and Tavares Construction Company, Inc., a corporation, as amended (commonly known as Plancor 407, as amended) to be as follows:

“In the District Court of the United States, in and for the Southern District of California, Southern Division.

United States of America, Plaintiff, vs. Certain Parcels of Land in the City of National City, County of San Diego, State of California; Tavares Construction Company, et al., Defendants. No. 248-SD Civil.



# VERDICT

We, the Jury in the above-entitled cause, sworn and empanelled to determine just compensation for the condemnation [256] and taking of certain property herein involved, find the just compensation to be as follows:

Parcel 9 (known as the Johnson land)      \$6,750.00

Parcels 1, 2, 3, 5, 6, 7, 8 and A (known  
as the City of National City land) . \$650,000.00

Out of which last named sum we allocate  
to the San Francisco Bridge Company  
as just compensation for the con-  
demnation and taking of its leasehold  
interest . . . . . \$50,000.00

To Tavares Construction Company, Inc.,  
a corporation, Concrete Ship Con-  
structors, a joint venture, Lloyd S.  
Stroud, R. S. Seabrook, C. M. Elliott,  
Carlos Tavares, Henry M. Page, Don  
F. Gates and Stroud-Seabrook, a co-  
partnership, for the condemnation and  
taking of all their interests under the  
agreement of December 27, 1941  
(known as Plancor 407, as amended) \$ 0

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Dated: San Diego, California, February 27,  
1947."

That said Verdict is in proper form in law, and judg-  
ment should be entered thereon in favor of the parties in  
interest.

It Is Therefore Ordered, Adjudged and Decreed:

1. That the Verdict of the jury dated and returned February 27, 1947, be enrolled in the records of this proceeding of this court relating to this cause:

2. That the just compensation for the condemnation and taking by plaintiff of the real property hereinafter described and designated Parcel 9, including all improvements located thereon, and all compensable interest therein, and for the use of said property from the date of entry into possession thereof by plaintiff, United States of America, or its [257] agent, until the date of the filing of said Declaration of Taking No. 1 and deposit of the estimated just compensation for said property, is the sum of Six Thousand Seven Hundred Fifty Dollars (\$6,750.00); and that the defendants herein, as their interest may be determined by the court, have judgment against plaintiff in that amount, together with interest as hereinafter specified; and it appearing that on the 3rd day of October, 1944, the sum of Twenty-One Hundred Dollars (\$2100.00) was deposited in the Registry of this Court as the estimated just compensation for the taking of said Parcel 9; and that on the 8th day of April, 1947, said estimated compensation was increased by Thirteen Hundred Forty-Eight Dollars (\$1348.00) to Thirty-Four Hundred Forty-Eight Dollars (\$3448.00); and that there is a deficiency of Thirty-Three Hundred Two Dollars (\$3302.00) in the sum deposited as said estimated just compensation, it is ordered that the plaintiff, United States of America, deposit in the Registry of this Court for the persons entitled thereto said deficiency in the sum of Thirty-Three Hundred Two Dollars (\$3302.00) together with interest at the rate of 6% per annum on the sum of Six Thousand Seven Hundred Fifty Dollars

(\$6,750.00) from November 10, 1942, the date the United States entered into possession of said real property, until October 3, 1944, the date of the filing of Declaration of Taking No. 1 and of the deposit of said sum of Twenty-One Hundred Dollars (\$2100.00); together with interest at the rate of 6% per annum on the sum of Four Thousand Six Hundred Fifty Dollars (\$4,650.00), from October 3, 1944, to the 8th day of April, 1947; and together with interest on Thirty-Three Hundred Two Dollars (\$3302.00) from the 8th day of April, 1947, to the date of the deposit of said deficiency into the Registry of this Court.

3. That the sum of Thirty-Four Hundred Forty-Eight Dollars (\$3448.00) now on deposit in the Registry of this Court, as the estimated just compensation for the taking of said Parcel 9, be paid forthwith by the Clerk of this Court as follows:

(a) To the Auditor of San Diego County, the sum of \$45.99, in full satisfaction of defendant County of San [258] Diego's interest in and to said Parcel 9;

(b) To defendants Carl A. Johnson and Pearl Johnson, the sum of \$3392.01, in partial satisfaction of their interest in and to said Parcel 9;

4. That upon deposit of said deficiency of Thirty-Three Hundred Two Dollars (\$3302.00), together with the interest hereinabove specified in paragraph 2, it is ordered that said deficiency and interest be paid to defendants, Carl A. Johnson and Pearl Johnson;

5. That the just compensation for the condemnation and taking by plaintiff of the real property hereinafter described and designated as Parcels 1, 2, 3, 5, 6, 7, 8 and

A, including all improvements thereon, and all compensable interest therein, and for the use of said property from the date of entry into possession thereof by plaintiff, United States of America, or its agent, until the dates of the filing of the said Declaration of Taking No. 1 and Amended Declaration of Taking, and deposit of the estimated compensation for said property, is the sum of Six Hundred Fifty Thousand Dollars (\$650,000.00), and that the defendants herein, as their interests may be determined by the court, have judgment against plaintiff in that amount, together with interest as hereinafter specified; and it appearing that the sum of Three Hundred Ten Thousand Four Hundred Seventy-Five Dollars (\$310,475.00) has heretofore been deposited into the Registry of this Court as the estimated just compensation for the taking of said parcels, and that there is a deficiency in the sum of Three Hundred Thirty-Nine Thousand Five Hundred Twenty-Five Dollars (\$339,525.00) in the sum deposited as estimated just compensation for the taking of said parcels; it is ordered that plaintiff, United States of America, deposit into the Registry of this Court for the benefit of the persons entitled thereto said deficiency in the sum of Three Hundred Thirty-Nine Thousand Five Hundred Twenty-Five Dollars (\$339,525.00), (together with interest at the rate of 6% per annum on the sum of Six Hundred Fifty Thousand Dollars (\$650,000.00) from November 10, 1942, the date the United States entered into possession thereof, [259] to October 3, 1944, the date of the filing of Declaration of Taking No. 1 and of the deposit of One Hundred Six Thousand Two Hundred Forty Dollars (\$106,240.00) in the Register of this Court); with interest at the rate of 6% per annum on the sum of Five Hundred Forty-Three Thousand Seven Hundred Sixty Dollars (\$543,760.00)

from October 3, 1944, to December 23, 1944, the date of the filing of the Amended Declaration of Taking and of the deposit of the additional sum of Fifty-Five Thousand One Hundred Ten Dollars (\$55,110.00) in the Registry of this Court; with interest at the rate of 6% per annum on the sum of Four Hundred Eighty-Eight Thousand Six Hundred Fifty Dollars (\$488,650.00), from December 23, 1944, to April 8, 1947, the date of the deposit of the additional sum of \$149,125.00 and with interest at the rate of 6 per cent per annum on the sum of Three Hundred Thirty-Nine Thousand Five Hundred Twenty-Five Dollars (\$339,525.00) from April 8, 1947, to the date of the deposit of said deficiency into the Registry of this Court;

6. That the amount of Three Hundred Ten Thousand Four Hundred Seventy-Five Dollars (\$310,475.00) heretofore deposited into the Registry of this Court as estimated compensation has heretofore, by order of this Court entered on the 18th day of April 1947, been distributed to the persons entitled thereto, which Order of Distribution is confirmed.

7. That on deposit in the Registry of this Court of the said deficiency of Three Hundred Thirty-Nine Thousand Five Hundred Twenty-Five Dollars (\$339,525.00), as hereinabove specified in paragraph 5, it is ordered that said sum be paid as follows:

(a) To defendant San Francisco Bridge Company the sum of \$26,118.00

(b) To defendant City of National City the sum of \$339,525.00

and that on deposit of the interest hereinabove specified in paragraph 5, it is ordered that said interest be paid to



defendant City of National City and defendant San Francisco Bridge Company in the following proportions: [260]

(1) To defendant San Francisco Bridge Company, one-thirteenth ( $1/13$ );

(2) To defendant City of National City, twelve-thirteenths ( $12/13$ 's);

8. That all claims, liens, taxes and assessments against said Parcels 1, 2, 3, 5, 6, 7, 8, 9 and A, and the claim for the award of just compensation for the condemnation and taking of the same are transferred from said parcels to the money deposited and to be deposited in the Registry of this Court to the end that the title of United States of America to said parcels of land, pursuant to Declaration of Taking No. 1 hereinbefore referred to, and Amended Declaration of Taking hereinbefore referred to, shall be free and clear thereof, and the United States of America shall be and is hereby released and discharged from liability to any person or persons whatsoever for such liens, claims, assessments and taxes against said parcels, including the award of just compensation, which liability shall thereupon attach solely to and be satisfied out of said funds so deposited and to be deposited, for and on account of the award of just compensation heretofore made by this Court;

9. That pursuant to Declaration of Taking No. 1 filed by plaintiff herein on October 3, 1944, there became vested in the United States of America on said date the full and indefeasible fee simple absolute title to the said Parcels 2, 3, 5, 6, 7, 8, 9 and A, including all improvements, facilities and fixtures located thereon; that pursuant to the Amended Declaration of Taking filed by plaintiff herein on December 23, 1944, there became

vested in the United States of America on said date the full and indefeasible fee simple absolute title to said Parcel 1, including all improvements, facilities and fixtures located thereon;

10. That the just compensation for the condemnation and taking by plaintiff of all right, title, and interest of defendants Tavares Construction Company, Inc., Concrete Ship Constructors, Lloyd S. Stroud, R. S. Seabrook, Stroud-Seabrook, C. M. Elliott, Carlos Tavares, Henry M. Page and Don F. Gates, in and to the real property designated as [261] Parcels 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and A and hereinafter described, and all improvements, facilities and fixtures located thereon, and the option, leasehold and possessory rights granted to said last named defendants, or any of them, by that certain lease and agreement dated December 27, 1941, between Defense Plant Corporation and Tavares Construction Company, Inc., as amended (commonly known as Plancor 407, as amended), is nothing:

11. That all right, title and interest of defendants Tavares Construction Company, Inc., Concrete Ship Constructors, Lloyd S. Stroud, R. S. Seabrook, Stroud-Seabrook, C. M. Elliott, Carlos Tavares, Henry M. Page and Don F. Gates, in and to the real property designated as Parcels 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and A and hereinafter described, and all improvements, facilities and fixtures located thereon, and the option, leasehold and possessory rights granted to said last named defendants, or any of them, by that certain lease and agreement dated December 27, 1941, between Defense Plant Corporation and Tavares Construction Company, Inc., as amended (commonly known as Plancor 407, as amended), have become and are hereby vested in the United States of America;

12. That there is vested in the persons entitled thereto, as their respective interests may appear and be established, the right to just compensation heretofore fixed by the Verdict of the jury hereinbefore set forth for the lands referred to in said Verdict and hereinabove described, and for all compensable interests therein;

13. The Court is apprised of pending negotiations which contemplate the exclusion from the proceeding and revesting title in the former owners of a portion of the City of National City land, and this judgment is entered without prejudice to the rights of the proper parties to stipulate for such exclusion and revesting.

14. That this Court retains jurisdiction hereof for the purpose of making such further orders, judgments and decrees as may be necessary in the premises, including adjudication of the rights of the respective parties or claimants in and to all funds deposited and to [262] be deposited in the Registry of this Court by plaintiff in satisfaction of the award and judgment made herein.

Dated: This 6th day of June, 1947.

PAUL J. McCORMICK

United States District Judge

Approved as to form as provided by Rule 8: James M. Carter, United States Attorney; C. U. Landrum, Special Assistant to the Attorney General; Robert G. Berrey, Special Attorney; by Robert G. Berrey, Attorneys for Plaintiff, United States of America. Hunter M. Muir, Attorney for Defendants Carl A. Johnson and Pearl Johnson. Monroe & McInnis, Jean Daze Ratelle, and Campbell & Campbell, by C. M. Monroe, Attorneys for Defendant City of National City. John M. Martin, Frank L.

Martin, Jr., and Charles C. Crouch, by .....,  
Attorneys for Defendants Tavares Construction Com-  
pany, Inc., a corporation, Concrete Ship Constructors, a  
joint venture (sued herein as Doe One), Stroud-Seabrook,  
a copartnership (sued herein as Doe Two), Lloyd S.  
Stroud (sued herein as Doe Three), R. S. Seabrook (sued  
herein as Doe Four), C. M. Elliott (sued herein as Doe  
Five), Carlos Tavares (sued herein as Doe Six), Henry  
M. Page (sued [263] herein as Doe Seven), and Don F.  
Gates (sued herein as Doe Eight). H. G. Sloane, Attor-  
ney for Defendant San Francisco Bridge Company, a  
corporation. Leonard McLachlan (sued herein as Leonard  
McLaughlin), Defendant in Propria Persona. Fred N.  
Howser, Attorney General, and L. G. Campbell and John  
F. Hasslen, Jr., By ....., Attorneys for De-  
fendant State of California. James Don Keller, District  
Attorney, and Duane J. Carnes, Deputy District Attor-  
ney, by Duane J. Carnes, Attorneys for Defendant County  
of San Diego. [264]

The real property hereinbefore referred to and desig-  
nated as Parcels 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and A are  
situate in the City of National City, County of San Diego,  
State of California, and are particularly described as  
follows:

Parcel 1. [Description not printed as it is same as set  
forth in Complaint on page 6.]

Parcel 2. [Description not printed as it is same as set  
forth in Complaint on page 7.]

Parcel 3. [Description not printed as it is same as set forth in Complaint on page 7.] [265]

Parcel 4. [Description not printed as it is same as set forth in Complaint on page 8.] [266]

Parcel 5. [Description not printed as it is same as set forth in Complaint on page 9.]

Parcel 6. [Description not printed as it is same as set forth in Complaint on page 10.] [267]

Parcel 7. [Description not printed as it is same as set forth in Complaint on page 10.]

Parcel 8. [Description not printed as it is same as set forth in Complaint on page 11.] [268]

Parcel 9. [Description not printed as it is same as set forth in Complaint on page 11.]

Parcel 10. [Description not printed as it is same as set forth in Complaint on page 12.] [269]

Parcel 11. [Description not printed as it is same as set forth in Complaint on page 13.] [270]

Parcel A. [Description not printed as it is same as set forth in Amendment to Complaint on page 24.]

Judgment entered Jun. 6, 1947. Docketed Jun. 7, 1947. C. O. Book 12, page 518. Edmund L. Smith, Clerk; by John A. Childress, Deputy.

[Endorsed]: Filed Jun. 6, 1947. Edmund L. Smith, Clerk. [271]



[Title of District Court and Cause]

### MOTION FOR NEW TRIAL

Defendants, Tavares Construction Company, Inc., a corporation, Concrete Ship Constructors, a joint venture, Lloyd S. Stroud, R. S. Seabrook, C. M. Elliott, Carlos Tavares, Henry M. Page, Don F. Gates, and Stroud-Seabrook, a copartnership, move the Court for a new trial in the above entitled proceeding upon the following grounds:

1. Errors in law occurring at the trial, and especially in the particulars specified in paragraphs 1 and 2 of the Memorandum of Points and Authorities attached hereto and made a part of this Motion by reference.
2. Irregularity in the proceedings of the Court, jury and the adverse party and orders of the Court and abuse of discretion by which defendants were prevented from having a fair trial.
3. The verdict is against law. [272]
4. Insufficiency of the evidence to justify the verdict, and especially in the particulars specified in paragraph 5 of the Memorandum of Points and Authorities attached hereto and made a part of this Motion by reference.
5. Inadequate damages appearing to have been given under the influence of passion or prejudice.
6. Accident or surprise which ordinary prudence could not have guarded against.

Said Motion will be based upon the files and records in the case, the exhibits, the minutes of the court, the tran-

script of the testimony, the affidavits served and filed herewith, and the Memorandum of Points and Authorities attached hereto and made a part hereof.

Dated this 6th day of June, 1947.

CHARLES C. CROUCH  
JOHN M. MARTIN  
FRANK L. MARTIN, JR.

Attorneys for Tavares Construction Company, Inc., a corporation, Concrete Ship Constructors, a joint venture; Lloyd S. Stroud, R. S. Seabrook, C. M. Elliott, Carlos Tavares, Henry M. Page, Don F. Gates, and Stroud-Seabrook, a copartnership. [273]

MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF MOTION FOR NEW  
TRIAL

1. Erroneous and misleading instructions.

(a) The Court instructed the jury:

“\* \* \* and in this connection if you find that the interest of the Tavares Construction Company and its associates under said instrument of agreement is so speculative and conjectural that no purchaser in the open market would have purchased the same except for a nominal consideration then your verdict as to the interest of the Tavares Construction Company and the Concrete Ship Constructors herein must be in a nominal figure only.”

The above instruction is clearly erroneous. By it a question of law was left for the jury to determine, to wit: the interpretation of a contract. In other words, instead

of the jury being called upon to determine the market value of an interest in land, they were called upon to determine whether or not defendants had any interest at all in the land, a question which the court had already determined upon pretrial in favor of defendants.

(b) The Court instructed the jury:

“Evidence has been received in this case with relation to the interest of the defendant, Tavares Construction Company, Inc. That interest arises out of an instrument which is in evidence as defendants’ ‘Exhibit W’. That instrument is a lease coupled with an option. In your consideration of that feature of the case you will proceed in the same manner as you proceed as to the market value of the land, the question being what could it have been sold for on the [274] open market for cash on December 23, 1944, the date it was taken or canceled by this proceeding, or shortly thereafter, above what Tavares Construction Company, Inc. would have to have paid under all its terms and conditions. If you find the company could have made such a sale your verdict will be for the amount you in your judgment determine the company could have gotten for it. You will consider the entire instrument, not just parts of it. If you find it could not have been sold, then your verdict as to Tavares Construction Company, Inc. will be zero. (underscoring ours)

The above instruction is clearly erroneous and very misleading. It was the last one given to the jury and hence was foremost in their minds.

By it the jury were told by the Court that the agreement was canceled by this proceeding, which meant that there would be nothing left to sell.

Next the jury were instructed that the market value of the agreement was what it would sell for above what Tavares would have to have paid under all its terms and conditions. This unquestionably conveyed to the jury the idea that the agreement would have to sell for approximately \$3,000,000 in order for the jury to allow Tavares \$500,000.

The underscored portion of the foregoing instruction reading—

“above what Tavares Construction Company, Inc. would have to have paid under all its terms and conditions.”

was very prejudicial because it was entirely erroneous as applied to the obligations of Tavares under the Lease as a whole.

Under Exhibit W Amendment of November 11, 1942 Paragraph 31 the jury were told (in effect) that if they rendered verdict in favor [275] of landowners, that said sum plus interest would represent the acquisition cost of the site and that the amount of such acquisition cost would be added to the amount which Tavares was required to pay to Defense Plant Corporation as rental.

The jury did not know from any evidence in the case, nor were they informed by the Court, that the amount of the acquisition cost of the site was a reimbursable item of expense to Tavares under its contracts with the Government for construction of ships. (See Agreements on file and attached to Amended Declaration of Taking.)

For the Court to instruct the jury that the question was what the Lease (Exhibit W) could have been sold for above what Tavares would have to have paid under all its terms and conditions was the same as telling the jury that it had to be sold for more than the acquisition cost (which the jury found to be \$650,000). This was not true because the acquisition cost referred to in Paragraph 31 of the Lease Amendment of November 11, 1942 was to be added as rental and by separate contract with the Government was reimbursable by the Government to Tavares.

What the Court had in mind may have been proper. That is to say, the Court may have had in mind only the obligation of Tavares as to the amount to be paid as the option price but what the instruction actually says is would have to have paid under all its (Exhibit W) terms and conditions. Had the Court told the jury the value of the option was the amount for which the shipyard could be sold over and above the option price, its instruction would have been clear and correct. Had the Court told the jury that the market value of the Lease and Option was the amount for which it could be sold without addition of the qualifying words above what Tavares would have to have paid, the instruction would have been clear. It would, however, have been correct only in the event Tavares, et al. are limited to recovery of market value of a chose in action against the plaintiff. This measure of recovery we will later discuss as we deem it less than [276] just compensation in a case of this kind.

Lastly the jury were instructed that if they found that the Agreement could not be sold, then their verdict will be zero. This was the last instruction to the jury and no



doubt remained foremost in their minds. By this last instruction, the jury had to first determine whether or not the agreement could be legally sold. By the terms of the agreement, it could not be assigned without the prior consent of the Defense Plant Corporation and the Maritime Commission. The evidence does not show such consent was obtained. It is therefore evident that the jury determined that the agreement could not be sold, not because it had no market or other value, but because of its provisions against the transfer thereof. Their verdict for zero confirms this, otherwise they would have brought in a verdict for some amount, as obviously the lease had some value.

This erroneous and misleading instruction has resulted in a gross miscarriage of justice. Actually the Court instructed the jury to bring in a verdict of zero for Tavares. If such an instruction was proper as to Tavares, then a similar instruction should have been given as to National City, as its tidelands could not be sold, and the verdict as to National City would have been zero. The same appraisers who testified as to values for National City also testified as to values for Tavares. The jury accepted the opinions of these appraisers for National City. It is evident that the only reason the jury did not accept the opinions of these same appraisers for Tavares is because of the above erroneous instructions.

At page 1073 of the Transcript the Court made a preliminary statement to the effect that the date of taking as to all interests other than Tavares was November 10, 1942. However, as shown by the Affidavit of Frank L. Martin served herewith, the Court later concluded to submit to the jury the question as to date of taking as to Parcel A for the reason that an issue of fact was there

involved. The Court instructed the jury in this respect (Tr. p. 1257) as follows: [277]

“If you find that the condemnation and taking by plaintiff United States of America of Parcel A herein was a part of the same project for which the other lands herein have been condemned and taken by the United States of America, and that it was certain on November 10, 1942, that Parcel A would be condemned and taken as a part of the same project for which the other lands herein condemned have been taken, then and in that event you must evaluate Parcel A in the same manner and use the same date of valuation as if Parcel A had been included in the original complaint for condemnation filed herein November 10, 1942.”

The Court, however, did not instruct the jury as to the date of taking or valuation in the event it found that the taking of Parcel A was not a part of the project for which the other lands were taken. Tavares's option price could only be determined by calculating interest on the award as to Parcel A from the date of taking to the date of judgment. The basic facts upon which the judgment in favor of the landowners can properly be calculated are not now known, as the issue as to date of taking has never been determined. It is only by assuming that the jury found that the taking of Parcel A was a part of the same project for which the other lands were taken, that a judgment in favor of the landowners can now be entered upon the verdict as rendered. There exists no legal right to make any such assumption. The Court having submitted this question as to date of taking of Parcel A to the jury, erred in discharging the jury without requiring it to make a finding as to date of taking Parcel A.

The value of Tavares's option, exclusive of any possessory rights under the Lease, was the difference between the option price and what the shipyard could be sold for as of December 23, 1944.

In order for the jury to determine the option price of the shipyard it was necessary that it first know the date of taking of [278] Parcel A. Without such knowledge it could neither intelligently nor accurately determine the acquisition cost of Parcel A which was a substantial portion of the shipyard site.

The jury having failed to find as to the date of taking of Parcel A and the Court having failed to instruct the jury definitely as to the date, it is apparent that the jury could not have based its verdict of zero upon any finding or decision as to the date of taking of Parcel A.

Therefore, it was impossible for the jury to determine the difference between the option price at which Tavares could have purchased the shipyard and the price at which it could have been sold as of December 23, 1944 and in that manner arrive at the fair market value of the option feature of the Tavares Leasehold Estate. By the Court's ruling upon pre-trial, the option feature of the Lease was held to be compensable and properly taken into consideration in arriving at the market value of the Tavares Leasehold Estate.

If by this action in eminent domain the Government can deprive Tavares of its right to enforce the terms of its option and the right it would otherwise have to sue in the Court of Claims upon the option contract for the recovery of damages and at the same time instruct the jury that its verdict shall be zero in the event it finds that the option could not be sold, then with this case as a

precedent the Attorney General of the United States can, immediately and without the payment of any compensation to any claimant, obtain a dismissal of every suit now pending in the United States Court of Claims or that may hereafter be filed in said Court for damages for breach of contract.

In order to defeat such actions in the Court of Claims it will only be necessary for the Government to proceed as follows:

First: By eminent domain condemn or by requisition acquire the basic contract upon which such action in the Court of Claims is founded. [279]

Second: In the eminent domain action point out that contracts with the United States Government are not assignable without the consent of the Government and that such consent has not been given.

Third: Have the Court in which the condemnation case is tried instruct the jury that if it finds that the contract could not be sold, that its verdict should be for zero.

Inasmuch as such Government contracts can neither be sold, assigned, nor any right of action thereon maintained as against the Government in the name of an assignee, we find that payment of just compensation for the taking in eminent domain can not only be avoided but that all right of redress thereon be defeated if what has heretofore happened in the instant case can be repeated in other cases.

The real trouble in the instant case is that the Government has proceeded to condemn and acquire not merely Tavares's interest in the land, but also Tavares's chose in action based upon the Option. This chose in action the

Government did not need. No public necessity existed for its condemnation. It was a right of action personal to Tavares. What justification has been established for its taking? The Government did not need it for any public use. It should have taken only that part of the Leasehold Estate required by public necessity. It should have excluded the Option to Purchase from the taking. It knew that if it did so, Tavares would elect to purchase as soon as the fee title had been acquired by the Government. It sought by this action not only to condemn what it needed for public Governmental use, but also to acquire Tavares's Option upon which the optionee might otherwise have founded an action in the Court of Claims had the Government failed to deliver fee title to the shipyard in conformity with its contract commitment.

Government counsel has not advanced nor does the evidence show one single reason why there exists any public necessity or other ground for condemning the Tavares Option. The right of possession to and quiet title of the shipyard could have been obtained in this case [280] without including a condemnation of the Option to Purchase. That is all the Government needed and the Tavares option rights could then have been adjudicated in the United States Court of Claims where damages for breach of contract would in no manner be dependent upon or measured by the rule of market value as normally applied in eminent domain cases.

Had such option been eliminated from the present taking and Tavares filed suit for damages, the Court of Claims would have allowed just compensation without regard as to whether the option could be sold or had any market value. In fact, one of the very objects of requiring suits in the Court of Claims to be filed in the name



of the original contracting party or claimant is to prevent their having any market value. In other words, to prevent the barter and sale of claims against the Government.

It was not until the assignment of Claims Act in 1940 that Congress even permitted an assignment of monies to be paid under a Government contract, and even those cases do not permit the assignment of the basic contract with the Government.

Were Tavares prosecuting an action in the Court of Claims for just compensation for breach of the Option to Purchase, the fact that no prospective purchaser could be found who would or could purchase the option contract would be neither material to the issue of amount of damages nor operate as a defense to the Government. In such a case it might be conceded that Tavares could not sell his option, even with the consent of the Government, for more than ten thousand dollars and that its right of recovery was doubtful, and yet if as a result of a trial upon the merits the Court of Claims found that the actual damages sustained by breach of the option were one million dollars, Tavares would still recover judgment for the full amount of the actual damages sustained.

In other words, the admitted fact that no one wants to buy a contested claim or lawsuit against the Government is immaterial to [281] and no criterion of a claimant's right to recover judgment. Though every potential buyer for the option declined to pay any substantial sum for the option and Tavares were to decline to sell the option at any price, proof thereof would be wholly immaterial to Tavares's right to recover damages for breach of the option contract.

The Government having elected to acquire the Tavares option rights in the instant case, this Court should follow

the same rules as to determination of just compensation as though the Government had filed its Declaration of Taking but filed no action to condemn and Tavares were before the Court of Claims seeking just compensation. Admittedly the Court of Claims would not follow the rule of market value and it is doubtful if that Court would even permit either party to prove either that the option had or did not have a market value.

Certainly in such a case the Government would not be bound nor would the Court of Claims render judgment against the Government upon mere proof that the option had a market value.

As shown by the Answer, Counter-Claim and Cross-Claim of Tavares, et al., filed May 3, 1945, it is alleged at Paragraphs IV, V, VI and VII thereof as follows:

#### “IV

That defendant City of National City herein has attempted to oust the jurisdiction of this Court and nullify this Court's Order of Possession by the commencement of an independent action against these answering defendants in the Superior Court of the State of California in and for the County of San Diego, being an action entitled “City of National City, a municipal corporation, Plaintiff, vs. Tavares Construction Company, Inc., a corporation, et al., Defendants” No. 121165, and filed August 25, 1944. That in said Superior Court action the defendant City of National City seeks to recover the sum of \$76,346.29 from these answering defendants for the use of said premises during the period commencing at the time [282] plaintiff took possession of said premises pursuant to the Order of Possession issued

by this Court in the above entitled cause on November 10, 1942, to the date of the filing of said Superior Court action, and for further amounts which it alleges will accrue after the commencement of said action, and has caused a Writ of Attachment to be issued and levied on moneys belonging to these answering defendants.

## V.

That in order to avoid a multiplicity of actions and to enable this Court to properly administer its Order of Possession and to do equity herein, this Court should fully determine in this action the respective rights of all parties thereto. These answering defendants allege that the plaintiff took possession of the premises described in the Amended and Supplemental Complaint under and by virtue of the authority granted by the Second War Powers Act approved March 27, 1942 (Public Law 507, 77th Congress) and that the Order of Possession dated November 10, 1942, and the Order of Possession dated September 23, 1944, confirmed and conferred the legal right of possession of each and all of the premises described in the Amended and Supplemental Complaint upon the plaintiff, and that the plaintiff, acting through the defendant, Defense Plant Corporation, had by the aforesaid written lease dated December 27, 1941, and the amendments thereto granted the Tavares Construction Company, Inc. exclusive possession of said premises.

## VI.

That by the terms of the written contracts for the construction of ships and repair of ships entered in-

to subsequent to November 10, 1942 between United States Maritime Commission, the Navy Department and the War Department, acting for and on behalf of the plaintiff, and these answering defendants, the plaintiff has represented that it owned said premises and [283] agreed that the use and occupancy of all of said premises by these answering defendants would be without rental or other charge.

## VII.

That the sole right of the defendant City of National City and each and all of the other cross-defendants to recover compensation for the use of the premises described in the Amended and Supplemental Complaint during the period subsequent to November 10, 1942, being the date of entry of this Court's Order of Possession as to Parcels Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, and the date of the actual taking of Parcel A, is to seek an award herein against the plaintiff for compensation for the use of said premises during said period of advance possession. These answering defendants seek a decree herein as against all of the parties herein so adjudicating the rights of these defendants."

At Paragraph 4, page 7, of the above quoted Answer, Counter-Claim and Cross-Claim, Tavares, et al. pray for judgment as follows:

"4. That there is no rent or other compensation due from any of these answering defendants to either the plaintiff or to any of the cross-defendants on account of the use and occupancy of any of the premises described in the Amended and Supplemental Complaint subsequent to November 10, 1942."

The Court having submitted to the jury as an issue of fact the question as to date of taking of Parcel A, there is no way by which the Court can legally render judgment upon the issues raised by the above quoted portions of the pleadings until such issue of fact has been determined by the jury.

Under the instructions as given and the rulings as made the real issue in this case was not open to decision by the jury upon its [284] merits and a new trial should be granted.

The failure of the jury to determine the date of taking as to Parcel A is prejudicial to Tavares, et al. for the additional reason that the date being undetermined, there is now no legal basis upon which the Court can by its judgment herein decree either the date from which interest shall run as to Parcel A or the amount of the lump sum verdict of \$650,000 to be allocated to Parcel A for the computation of interest allowed. Nor can the Court fix the date when the defendant landowners ceased to have the right of use, occupancy or possession of Parcel A or the right to compensation or rental from Tavares, et al. in lieu thereof.

2. Error in Rulings on the admission of evidence and orders of the Court by which defendant was prevented from having a fair trial.

(a) The Court erred in admitting in evidence Plaintiff's Exhibits 2 and 3 relating to the intent of the Navy to take the Tavares agreement by this condemnation action and the Tavares offer of settlement. This was clearly an offer of compromise of the very taking involved in this action and was very prejudicial to defendants' rights.



Counsel for plaintiff commented on it repeatedly, and plaintiff's appraisers took into consideration the fact that the Navy was going to take the property.

(b) There is one right which counsel for defendants understood was acquired by this action, but as to which the court ruled counsel could offer no evidence. That is the right to sue the Government in the Court of Claims for breach of the agreement of lease by this proceeding.

Plaintiff's witnesses were permitted to testify that the option could be canceled any time by the Government requesting priority and never came into being because it was canceled by this condemnation action and therefore gave it no value. (Tr. 917; 956-971; 1018-1019; 1043-1044.) If they were correct in their interpretation [285] of the Lease and the law applicable thereto, then Tavares would except for the acquisition by plaintiff herein of said Lease and Option, have been entitled to sue in the United States Court of Claims for damages for breach of contract. This right of Tavares to sue in its own name was a valuable right and this defendant should have been permitted to offer evidence as to the value thereof. This the defendant was not permitted to do. (Tr. 401 to 405; 433 to 437.) Had such evidence been received it would have been a complete answer to the contention and evidence of the plaintiff that the option never came into being. This exclusion of such evidence was prejudicial error.

As to whether the option had come into being was a matter of law upon which the Court should have instructed the jury. Thus, while the Government and its witnesses were permitted to argue legal conclusions, counsel for Tavares was told that he would not even be permitted to talk about the Court of Claims. (Tr. 404.) In other

words the plaintiff is condemning a chose in action (right to sue in Court of Claims for damages for breach of contract) and yet defendant was not permitted to even tell the jury of such right or prove the value thereof.

The fact that the Government has selected this Court as a forum in no manner alters the fact that counsel for Tavares should have been permitted to tell the jury both orally and by evidence of its expert witnesses that among the grounds for their opinion as to value was the fact that even though Tavares could not sell or assign its option contract, Tavares did have, so long as it retained said option, a right to sue in the Court of Claims in its own name for damages equal in amount to the difference between the market value of the shipyard on December 23, 1944 and the option purchase price as of that date. The various elements which each expert witness included in his valuation were properly the subject of proof. Tavares was precluded from making such proof and in the proper conduct of its counsel obeyed the admonition of the Court and refrained from attempting such proof or speaking in the presence of the jury con- [286] cerning such proof.

The Court told the jury that when we are considering so-called expert testimony, the opinion which the witness gives is only as strong as the reasons which he assigns for that opinion, and yet counsel for Tavares was told by the Court, at the insistence of Government counsel, (Tr. 401 to 405; 433 to 437) that he would not be permitted to talk about the Court of Claims. As shown by affidavit of John M. Martin served herewith that meant to counsel for Tavares that it would be contrary to the Court's ruling and admonition for counsel to interrogate the witness then on the stand as to whether he had taken

into consideration, in forming his opinion as to value, the right of Tavares to sue in the Court of Claims for damages for breach of contract. The strength of the opinions of the witnesses who testified as to value for Tavares was accordingly greatly reduced. In fact the jury was at no time made aware of the existence of such a right of action in the Court of Claims.

3. Misconduct on the part of Mr. Landrum, Counsel for Plaintiff, which prevented defendant Tavares from having a fair trial.

(a) Mr. Landrum in his argument to the jury referred to Exhibits 2 and 3 and made the following statements in regard thereto.

(1) "Now, they knew, therefore on the 21st day of November 1944, that the Government was going to request priority for the Navy Department, and this Exhibit W says in one of those last paragraphs that it is contemplated they do that." (Tr. pg. 1192.)

Such statement is contrary to the evidence. The paragraph referred to is Twenty-six, which merely permits Defense Plant Corporation to transfer its rights as lessor to another branch of the [287] Government. Plaintiff's Exhibits 2 and 3 do not indicate that the Navy was going to request priority to use the shipyard as a shipyard as provided by paragraph Fourteen (b) but the Navy was going to take the property for some other purpose which would involve the taking of all of Tavares's rights under the Agreement. In other words, Mr. Landrum injected into the jury's mind the fact that no one would buy the Agreement because it was going to be condemned and all the purchaser would get would be a lawsuit instead of a

shipyard. Such an argument is clearly contrary to the law, as no prospective purchaser who wanted the property for a shipyard would buy it for use as a shipyard if he knew it was going to be condemned. He could just as legally have argued that San Francisco Bridge Co. could not have sold its lease to another dredging company because they knew it was going to be condemned and the purchaser would never get to use the property in his business.

(2) Mr. Landrum further stated in his argument:

“Ladies and gentlemen, you are not going to give them more than they asked for, are you, before this lawsuit was brought? And don’t forget that was only their asking price then.” (Tr. pg. 1192.)

Through the error in admitting Plaintiff’s Exhibits 2 and 3 in evidence, Mr. Landrum was enabled to comment on the compromise price. However, he went clear beyond that and stated that defendants had in fact received all of the considerations contained in the offer of compromise except the \$80,000, and even inferred that they may have received the alternative to that. (Tr. pg. 1193-1194.) These were matters which counsel for defendant was prohibited from going into during the trial because they were after the date of December 23, 1944. (Tr. pg. 510 to 518.)

(b) Mr. Landrum further stated in his argument:

“Whatever else may be said, Mr. Tavares is a capable business man. He cut himself in to this war-time Garden of Eden without the [288] expenditure of a penny. He built concrete barges for the Government of the United States at a profit, and now he

asks you to put your hands into the pockets of the people of the United States and to give him a half a million more." (Tr. pg. 1180.)

\* \* \* \* \*

"But, my goodness, are you going to permit those people to go into the treasury of the United States, when we come in here in a condemnation case, and get more?" (Tr. pg. 1194.)

"Well if you think they are entitled to that you give it to them. But if you think that it would be right for me to say to you 'I want to get some money out of this war business. I want you to spend \$2,700,000 to build me a shipyard to build concrete ships to sell to you at a profit, and then after it is all through and done, I want you to give me \$80,000 for building my own shipyard, and supervising that, and then on top of that I have taken the expense, I have taken the vacations for my own office force.'" (Tr. pg. 1195.)

There is no evidence that Tavares expended no money of his own, nor as to whether he made a profit or loss. It is all immaterial. However, the above statements were clearly made for the sole purpose of prejudicing the jury against Tavares.

(c) Mr. Landrum further stated in his argument:

"What they are actually doing, ladies and gentlemen, is coming into a condemnation case and trying to get damages against the Government of the United States for what [289] they claim is a violation of that contract." (Tr. pg. 1190.)



Such statement could only be calculated to convey to the jury the idea that the claim of Tavares was not compensable in this suit, although the Court had on pre-trial ruled that it was. This was clearly an argument of law to the jury and was prejudicial. Does not just compensation include damages, or does the word damages mean some kind of compensation in excess of what is just?

(d) Mr. Landrum further stated in his argument:

“\* \* \* That lease, Mr. Hindes”—and I am talking about the Tavares Construction Company claim now—“That lease, Mr. Hindes, carries within it a paragraph that it cannot be assigned or pledged without the written consent of the Defense Plant Corporation or of the Maritime Commission. Mr. Hindes, would you pay anything for a lease which you couldn’t assign? Would you sign that lease which you couldn’t assign? Would you sign that lease? “Why, no, Mr. Landrum, I wouldn’t sign such a lease.”

“I give you that, ladies and gentlemen of the jury, on both claims, that you give to them some money for what they claim was a fee which they were to get for building a shipyard with Government money upon which they could build ships at a profit and sell them to the Government, and then ask you to give them \$500,000 on top of that.” (Tr. pg. 1175.)

\* \* \* \* \*

“All right. Here is the thing that Mr. Hindes said was such that he never would have even signed this lease in the first place.” (Tr. pg. 1188.) [290]

\* \* \* \* \*

"Twenty-four: Lessee will not without prior written consent of Defense Corporation and the approval of the Maritime Commission sell, assign, or pledge this lease or any of its rights or obligations hereunder, or sublease or permit the use by others of any of the property covered by this lease."

"Mr. Willing Buyer, I want to sell you this lease. I want to assign it. I want to sublet a part of it to you. What will you give me?"

"Why, Mr. Tavares, you can't do that without you get the consent of the Defense Plant Corporation and the Maritime Commission. I wouldn't give you five cents for it. How do you know they are going to let you make a profit on this paper? Is it reasonable to suppose after they put up for you \$2,700,000 and build you a shipyard, that they will permit you to go ahead and sell this paper? Do you not know that on the date of this lease it is indicated that the Navy of the United States proposes to take over those utilities?"

"Mr. Tavares told me that he thought that he could get the consent of the Defense Plant Corporation and the Maritime Commission for him to make another half a million dollars." (Tr. pg. 1189.)

All of the above was clearly the argument of law to the jury. It could only convey to the jury that there could be no sale of the agreement as a matter of law. However, for the purpose of determining the market value in this case, the jury was supposed to assume that there could be a sale and that the prior consent thereto had been given. This was clearly prejudicial, especially when

considered in the [291] light of the Court's last instruction: "If you find it could not have been sold, then your verdict as to Tavares Construction Company, Inc. will be zero." The Court should just as properly have instructed the jury as to National City, "If you find that National City could not have sold its tidelands, then your verdict will be zero." National City was prohibited by statute from making any sale of its tidelands, consent or no consent. If the Court had given such an instruction as to National City with the evidence in the record as to the prohibition against sale, the jury certainly would have brought in a verdict of zero as to National City. Such an instruction would clearly have been error. The same applies to Tavares.

(e) Mr. Landrum further stated in his argument:

"\* \* \* But I say to you that the claim of Tavares Construction Company in this case goes out the window by virtue of evidence which you can see, which you can feel, and which will stand out before you like the tall pines in the forest of truth. Every claim that it has in this lawsuit stems from Exhibit W. I can say to you that, in reading that document, if you can tell me what it means, then you are probably a better man than I am. I tell you that, if the lawyers can agree on what that document means, they are better lawyers than I am. So, therefore their rights stemming from Plancor 407 are what you are to determine." (Tr. pg. 1181.) "\* \* \* But, if you will go with me through Exhibit W, and then can say that you believe that, on the 23rd day

of December, 1944, any man would have bought that instrument, and paid its market value as they have contended for, I will be unable to follow you." (Tr. pg. 1182.) [292]

Mr. Landrum then went through parts of the agreement, argued the meaning thereof, making and advancing positions of law to the jury that he himself must have known were wrong, all with the apparent studied effort on his part to confuse the jury as to the very things that they were erroneously called upon to decide. He clearly indicated to the jury that the agreement was so uncertain that he did not understand it. He succeeded in so confusing the jury over his erroneous point of law that no one would or could buy it regardless of what it may have been worth, that the jury, in obedience to the Court's erroneous instruction, brought in a verdict of zero.

Actually there is nothing wrong with the agreement. Its terms are clear and understandable by any business person. True there are contingencies in it, but the rights of the parties are all specifically set forth with reference thereto, and capable of being appraised.

Possibly Mr. Hindes would not sign a lease with a provision in it against assignment, but plenty of others do.

All of these arguments made by Mr. Landrum regarding the agreement being indefinite, uncertain, speculative and conjectural were made in his objection to the receipt of any evidence with relation to the market value of the lease. In accordance with the Court's ruling with regard to such objection, counsel should not have argued these points of law to the jury. By his so doing, the jury was called upon to decide these very points of law that the

Court had, without the knowledge of the jury, already decided against counsel for Plaintiff. This was clearly misconduct on the part of Mr. Landrum, was prejudicial error and has resulted in a miscarriage of justice.

4. The verdict is against law.

The jury gave full credit to the witnesses for National City as to values. The same witnesses testified for Tavares Construction Company. Is it at all possible that the jury believed these witnesses 100% as to their testimony as to National City and [293] yet disbelieved them 100% as to their testimony as to Tavares? The only answer is that the jury must have based their verdict on some point other than market value.

Isn't Tavares entitled to something? He was in peaceful possession of the property, actually using it rent free, constructing ships for the Government and doing ship repair work. Is Exhibit W just a scrap of paper? Did Tavares not have any rights under it? We submit that he did have, that those rights were taken, and he is entitled to just compensation therefor. The Court so determined upon pre-trial.

It must be kept in mind that the Government here condemned its own contract. It in effect took back that which it gave Tavares in exchange for what Tavares gave to the Government. Even if we view it in the nature of a rescission, such could only be accomplished by making Tavares whole, by at least giving back to Tavares that which he parted with for the agreement, to wit, the National City lease on Parcel 1 and a fair supervisory fee for constructing the shipyard. Certainly just compensation for the taking of any right, no matter how small or



whether someone else would buy it, cannot possibly be zero.

If the Government can lawfully breach its own obligations under the guise of condemnation, the other party to the contract should still be entitled to just compensation for the loss sustained by such breach.

As such right of action was included within the taking by the plaintiff of the lease and option contract, evidence as to the value of such chose in action should have been received. Even though the right to sue in the Court of Claims was personal to the Tavares Construction Company and could not be sold, assigned nor enforced in the name of an assignee, it was error to instruct the jury that its verdict should be zero merely because the jury found that the lease and option could not be sold. [294]

5. The evidence does not justify the verdict.

The only evidence as to the market value of the leasehold estate of Tavares is that given by defendants' witnesses. Mr. Mueller and Mr. Anawalt both testified that the market value was \$500,000. Mr. Bleifuss said \$573,000. Mr. Hotchkiss said \$600,000. Mr. Tavares said \$750,000.

Plaintiff's witnesses both testified that the lease had no value. But cross-examination of Mr. Shattuck showed very clearly that his opinion was based upon his erroneous interpretation of the agreement, to the effect that he understood that the Government could cancel all of Tavares's

rights by merely requesting priority. (Tr. pg. 956, 958, 969, 971.) Cross-examination of Mr. Mason showed that he based his opinion as to no value upon his opinion that the agreement was too speculative because of the many ifs, ands and possibilities of this and that happening, such as the right to remain on the property and to an option being cut off by condemnation, upon his knowledge of what happened after the last war to another shipyard, realizing that we were out of war at the moment, (thereby basing his appraisal on 1947 conditions instead of 1944 conditions) that the lease had been canceled by this condemnation action and that there was no option to purchase. (Tr. pg. 1018-1019 and 1043-1044.)

Thus the opinions expressed by plaintiff's witnesses as to value being based upon erroneous legal interpretations of the contract and upon factors which it was erroneous for them to consider, they were entitled to no weight or consideration as evidence.

The verdict is therefore not supported by any evidence and is against the weight of the evidence.

#### 6. Inadequate Damages.

The verdict of zero in this case is a miscarriage of justice. How could anyone possibly say, in view of all of the evidence that one who wanted a shipyard on December 23, 1944, assuming there was no condemnation, would not have given something to be able [295] to move into this going shipyard and be able to use all of its facilities and machinery. Certainly it would be worth something—not zero. If the Government had given its prior consent to the assignment, as must be assumed, the purchaser could certainly expect to at least remain in

possession for the duration of the war and for some time thereafter repairing ships for the Government, with an absolute right to the option to purchase upon the expiration of the lease or sooner termination thereof, unless terminated for failure to cure a default after 30 days notice thereof.

Even if we forget the option, and assume that all that Tavares had was a tenancy at will or at sufferance of the Government, the actual possession of the shipyard as a going concern, making money as counsel for plaintiff stated, had some value.

#### AUTHORITIES

Sections 657, 659 and 660 California Code of Civil Procedure.

It is respectfully submitted that the trial has resulted in a miscarriage of justice and that a new trial should be granted.

Respectfully submitted,

CHARLES C. CROUCH

JOHN M. MARTIN

FRANK L. MARTIN, JR.

Attorneys for Defendants, Tavares Construction  
Company, Inc., and Associates

[Endorsed]: Filed Jun. 6, 1947. Edmund L. Smith,  
Clerk. [296]

[Title of District Court and Cause]

AFFIDAVIT OF JOHN M. MARTIN IN SUPPORT  
OF MOTION FOR NEW TRIAL

State of California

County of Los Angeles—ss.

John M. Martin, being first duly sworn, deposes and says: That he was present in the above entitled Court on the 27th day of February, 1947, and heard the argument to the jury made by Mr. Landrum, Counsel for the plaintiff in the above entitled action; that in said argument to the jury the said Mr. Landrum made the following statements, which statements have been copied from the official Reporter's Transcript thereof:

"Now, they knew therefore on the 21st day of November 1944, that the Government was going to request priority for the Navy Department, and this Exhibit W says in one of those last paragraphs that it is contemplated they do that." (Tr. pg. 1192.)

\* \* \* \* \* [297]

"Ladies and gentlemen, you are not going to give them more than they asked for, are you, before this lawsuit was brought? And don't forget that was only their asking price then." (Tr. pg. 1192.)

\* \* \* \* \*

"Whatever else may be said, Mr. Tavares is a capable business man. He cut himself in to this war-time Garden of Eden without the expenditure of a penny. He built concrete barges for the Government of the United States at a profit, and now he asks you to put your hands into the pockets of the people of the United States and to give him a half a million more." (Tr. pg. 1180.)

\* \* \* \* \*

"But, my goodness, are you going to permit those people to go into the treasury of the United States, when we come in here in a condemnation case, and get more?" (Tr. pg. 1194.)

"Well, if you think they are entitled to that you give it to them. But if you think that it would be right for me to say to you 'I want to get some money out of this war business. I want you to spend \$2,700,000 to build me a shipyard to build concrete ships to sell to you at a profit, and then after it is all through and done, I want you to give me \$80,000 for building my own shipyard, and supervising that, and then on top of that I have taken the expense, I have taken the vacations for my own office force.'" (Tr. pg. 1195.)

\* \* \* \* \*

"What they are actually doing, ladies and gentlemen, is coming into a condemnation case and trying to [298] get damages against the Government of the United States for what they claim is a violation of that contract." (Tr. pg. 1190.)

\* \* \* \* \*

"\* \* \* That lease, Mr. Hindes"—and I am talking about the Tavares Construction Company claim now—"That lease, Mr. Hindes, carries within it a paragraph that it cannot be assigned or pledged without the written consent of the Defense Plant Corporation or of the Maritime Commission. Mr. Hindes, would you pay anything for a lease which you couldn't assign? Would you sign that lease which you couldn't assign? Would you sign that



lease? "Why, no, Mr. Landrum, I wouldn't sign such a lease."

"I give you that, ladies and gentlemen of the jury, on both claims, that you give to them some money for what they claim was a fee which they were to get for building a shipyard with Government money upon which they could build ships at a profit and sell them to the Government, and then ask you to give them \$500,000 on top of that." (Tr. pg. 1175.)

\* \* \* \* \*

"All right. Here is the thing that Mr. Hindes said was such that he never would have even signed this lease in the first place." (Tr. pg. 1188.)

\* \* \* \* \*

"Twenty-four: Lessee will not without prior written consent of Defense Corporation and the approval of the Maritime Commission sell, assign, or pledge this lease or any of its rights or [299] obligations hereunder, or sublease or permit the use by others of any of the property covered by this lease."

"Mr. Willing Buyer, I want to sell you this lease. I want to assign it. I want to sublet a part of it to you. What will you give me?"

"Why, Mr. Tavares, you can't do that without you get the consent of the Defense Plant Corporation and the Maritime Commission. I wouldn't give you five cents for it. How do you know they are going to let you make a profit on this paper? Is it reasonable to suppose after they put up for you \$2,700,000 and build you a shipyard, that they will permit you to go ahead and sell this paper? Do you

not know that on the date of this lease it is indicated that the Navy of the United States proposes to take over those utilities?

“Mr. Tavares told me that he thought that he could get the consent of the Defense Plant Corporation and the Maritime Commission for him to make another half a million dollars.” (Tr. pg. 1189.)

\* \* \* \* \*

“\* \* \* But I say to you that the claim of Tavares Construction Company in this case goes out the window by virtue of evidence which you can see, which you can feel, and which will stand out before you like the tall pines in the forest of truth. Every claim that it has in this lawsuit stems from Exhibit W. I say to you that, in reading that document, if you can tell me what it means, then you are probably a better man than I am. I tell you that, if the lawyers can agree on what that document means, they are better lawyers than I am. [300] So, therefore, their rights stemming from Plancor 407 are what you are to determine.” (Tr. pg. 1181.)

“\* \* \* But, if you will go with me through Exhibit W, and then can say that you believe that, on the 23rd day of December, 1944, any man would have bought that instrument, and paid its market value as they have contended for, I will be unable to follow you.” (Tr. pg. 1182.)

Affiant further states that by the Court's ruling and admonition as set forth at page 404 of the Transcript to the effect that affiant would not be permitted to talk about the Court of Claims, affiant understood that he was not to question Tavares's expert witnesses as to whether

they assigned as a reason for their opinion as to value the fact that Tavares had a right to sue in the Court of Claims which chose in action had been acquired by this action.

Affiant further understood that counsel for Tavares should not in his argument tell the jury of the existence of such chose in action or that it had been taken from Tavares by this action.

Affiant further states that except for such ruling and admonition by the Court, he would have offered evidence by each of the expert witnesses who testified for Tavares, for the purpose of proving that the value of the right to sue in the Court of Claims was greater than the market value to which they had testified.

Affiant further states that except for such ruling and statement by the Court, affiant would have argued to the jury the facts that gave rise to such right of action in the Court of Claims, the fact that Tavares had been by this action deprived of the Lease and Option Contract upon which such action in the Court of Claims would of necessity be based and would have argued as to the value of said chose in action.

Affiant further states that except for the aforesaid ruling of the Court, affiant would have cross-examined each of the Government's expert witnesses for the purpose of showing that they had not only [301] failed to take into consideration Tavares's right of action in the Court of Claims for breach of the option contract, but that they were actually unaware of the existence of such a right on the part of Tavares and based their opinion upon their erroneous idea that the option had no value merely because it could not be sold.

Affiant further states that the aforesaid ruling and admonition by the Court took counsel for Tavares by surprise which ordinary prudence could not have guarded against and was extremely prejudicial to a proper consideration of the facts of the case by either the court or the jury.

Affiant further states that the case of National City vs. Tavares, et al., filed for the recovery of rental as alleged in Paragraphs IV, V, VI and VII of the Answer, Counter-Claim and Cross-Claim filed herein by Tavares, et al., is still pending and undetermined in the Superior Court of the State of California in and for San Diego County.

Affiant further states that it is his opinion that the Court in the instant case having first acquired jurisdiction of both the parties and the subject of the action pending in the State Court as aforesaid has exclusive jurisdiction in the premises and should proceed to fully and completely adjudicate the rights of all parties to this action to the end that this action may become res adjudicata of the rights of each and all of the parties hereto. That any Judgment herein rendered should by its terms be made to supersede any Judgment rendered in the aforesaid action by the State Court.

JOHN M. MARTIN

Subscribed and sworn to before me this 21st day of May, 1947.

(Seal)

ANNA M. ROSSER

Notary Public in and for the County of Los Angeles,  
State of California.

[Endorsed]: Filed Jun. 6, 1947. Edmund L. Smith,  
Clerk. [302]

[Title of District Court and Cause]

AFFIDAVIT OF FRANK L. MARTIN IN SUPPORT  
OF MOTION FOR NEW TRIAL

State of California

County of Los Angeles—ss.

Frank L. Martin, being first duly sworn, says:

That after the Court had instructed the jury in the above cause and the jury had retired to the jury room, but before the jury had returned their verdict, affiant called upon the Court in his chambers, and called the Court's attention to the fact that the Court on the previous day had stated that he had concluded that the date of taking as to all interests other than Tavares was November 10, 1942, but that the Court in his instructions had instructed the jury that as to Parcel "A" that if the jury found that it was originally contemplated that Parcel "A" would be taken as a part of the entire project, that the jury should also use November 10, 1942 as the date of evaluation for Parcel "A", and that this would leave the matter in such condition that the parties would not know what date the jury had used for [303] Parcel "A".

That the Court stated that while he had previously stated that he had determined that the date of taking as to all interests other than Tavares was November 10, 1942, that since a question of fact was involved as to the date of taking of Parcel "A", that he had decided to leave the matter to the jury.

FRANK L. MARTIN



Subscribed and sworn to before me this 21st day of May 1947.

(Seal)

ANNA M. ROSSER

Notary Public in and for the County of Los Angeles,  
State of California.

[Endorsed]: Filed Jun. 6, 1947. Edmund L. Smith,  
Clerk. [304]

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[Title of District Court and Cause]

ORDER DENYING MOTION FOR A NEW TRIAL

Upon consideration of the entire record, the motion of defendants Tavares Construction Company, Inc., a corporation, Concrete Ship Constructors, a joint venture, Lloyd S. Stroud, R. S. Seabrook, C. M. Elliott, Carlos Tavares, Henry M. Page, Don F. Gates, and Stroud-Seabrook, a copartnership, for a new trial in the above entitled proceeding is denied in toto. Exceptions allowed movants.

Dated July 29, 1947.

PAUL J. McCORMICK

United States District Judge

[Endorsed]: Filed Jul. 29, 1947. Edmund L. Smith,  
Clerk. [305]

[Title of District Court and Cause]

### NOTICE OF APPEAL

Notice is hereby given that the defendants Tavares Construction Company, Inc., a corporation, Concrete Ship Constructors, a joint venture, Stroud-Seabrook, a copartnership, Lloyd S. Stroud, R. S. Seabrook, C. M. Elliott, Carlos Tavares, Henry M. Page, and Don F. Gates, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from those portions of the judgment entered in this action on June 6, 1947 adjudicating issues between the plaintiff and said defendants but not from any portion thereof adjudicating issues between said defendants and any of the other defendants, and from the order denying the motion of said defendants for a new trial entered in this action July 29, 1947.

Dated this 25th day of August, 1947.

JOHN M. MARTIN and  
FRANK L. MARTIN, JR.

By John M. Martin

Attorneys for Defendants Tavares Construction Company, Inc., Concrete Ship Constructors, Stroud-Seabrook, Lloyd S. Stroud, R. S. Seabrook, C. M. Elliott, Carlos Tavares, Henry M. Page, and Don F. Gates

[Endorsed]: Filed & mld. copy to attys. for plf. & remaining defts., Aug. 26, 1947. Edmund L. Smith, Clerk. [306]

In the District Court of the United States for the  
Southern District of California

*Central Division*

No. 248-SD-Civil

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CERTAIN PARCELS OF LAND IN CITY OF NA-  
TIONAL CITY, COUNTY OF SAN DIEGO,  
STATE OF CALIFORNIA, TAVARES CON-  
STRUCTION CO., INC., a Corporation, et al.,

Defendants.

### BOND ON APPEAL

Whereas, in an action in the above entitled court, judgment was on June 6th, 1947, entered in said court; and

Whereas, the Defendants, Tavares Construction Co., Inc., a Corporation, Concrete Ship Constructors, a Joint Venture, Stroud-Seabrook, a Co-Partnership, Lloyd S. Stroud, R. S. Seabrook, C. M. Elliott, Carlos Tavares, Henry M. Page and Don F. Gates, are dissatisfied with said Judgment and are desirous of appealing therefrom to the Circuit Court of Appeals for the Ninth Circuit,

Now Therefore, in consideration of the premises and of such appeal, we, the undersigned hereby obligate ourselves to the Plaintiff above named under the statutory obligations (Rule 73(c) Rules of Civil Procedure for the District Courts of the United States) and we do hereby undertake in the sum of Two Hundred Fifty (\$250.00) Dollars and promise on the part of the said Defendants and Appellants, that said Appellants will pay

all costs, if the appeal is dismissed or the judgment is affirmed, or such costs as the [307] Appellate Court may award if the judgment is modified.

Dated: August 25th, 1947.

UNITED STATES FIDELITY AND  
GUARANTY COMPANY

By O. D. Brick

Attorney-in-Fact

The Premium on This Bond Is \$10.00 for 1 yr.

State of California

County of Los Angeles—ss:

On this 25th day of August in the year one thousand nine hundred and forty-seven, before me, Elizabeth A. Sheridan, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared O. D. Brick, known to me to be the duly authorized Attorney-in-fact of the United States Fidelity and Guaranty Company, and the same person whose name is subscribed to the within instrument as the Attorney-in-fact of said Company and the said O. D. Brick duly acknowledged to me that he subscribed the name of the United States Fidelity and Guaranty Company thereto as Surety and his own name as Attorney-in-fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

ELIZABETH A. SHERIDAN

Notary Public in and for Los Angeles County,  
State of California

My Commission Expires Nov. 5, 1948.

Examined and recommended for approval as provided in Rule 8. Frank L. Martin, Jr.

I hereby approve the foregoing bond. Dated this 26 day of Aug., 1947. Edmund L. Smith, Clerk U. S. District Court, Southern District of California; by Edw. F. Drew, Deputy.

[Endorsed]: Filed Aug. 26, 1947. Edmund L. Smith, Clerk. [308]

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[Title of District Court and Cause]

ORDER FOR TRANSMISSION OF ORIGINAL EXHIBITS TO APPELLATE COURT; USE OF COURT'S COPY OF TRANSCRIPT AND COURT'S COPY OF PLEADINGS

Pursuant to the Stipulation between the plaintiff, and the defendants Tavares Construction Company, Inc., et al., and good cause appearing therefor, it is hereby ordered, in connection with the preparation by the Clerk of this Court of the record on appeal by the defendants Tavares Construction Company, Inc., et al., notice of which appeal was filed August 26, 1947, as follows:

1. That in accordance with the provisions of Rule 75(i) of the Rules of Civil Procedure all of the original exhibits designated by either party for inclusion in the record on appeal shall be transmitted to the Appellate Court for its inspection, in lieu of copying the same into the record. That all of said original exhibits which are in the possession of the Clerk of this Court shall be transmitted by him to the Clerk of the Appellate Court at the time of the transmission of the rest of the record on



appeal, and shall be returned to the Clerk of this Court after the final determination of said [312] appeal and there is no longer any need therefor by the Appellate Court. That as to the exhibits which were returned to said defendants for safekeeping, that such defendants shall transport the same at such defendants' own expense and deliver the same to the Marshal of the Appellate Court as provided for in Rule 18 of the Rules of the United States Circuit Court of Appeals for the Ninth Circuit, and that such exhibits shall be deemed to be incorporated in the record on appeal.

2. That two copies of the transcript of the evidence and proceedings of the trial and of the motion for new trial need not be filed as required by Rule 75(b) of the Rules of Civil Procedure, but that in lieu thereof the Court's copy of said Transcripts shall be made available to the Clerk for inclusion in the record on appeal in connection with the appeal of said defendants.

3. That such of the extra copies of the pleadings and other proceedings, commonly known as the Court's copies, as are available may be removed by the Clerk from the files in this action or obtained from the Court and used by the Clerk in the preparation of the record on appeal of said defendants in lieu of making copies thereof.

Dated this 3rd day of Sept., 1947.

PAUL J. McCORMICK

Judge of the District Court

Presented by

FRANK L. MARTIN, JR.

Attorney for Defendants

[Endorsed]: Filed Sep. 3, 1947. Edmund L. Smith,  
Clerk. [313]

[Title of District Court and Cause]

STIPULATION EXTENDING TIME FOR DESIGNATION AND FILING BY APPELLEE OF ADDITIONAL PORTION OF RECORD, PROCEEDINGS AND EVIDENCE TO BE INCLUDED IN RECORD ON APPEAL; AND ORDER THEREON

It appearing that Tavares Construction Company, Inc., a corporation, and Concrete Ship Constructors, a joint venture, Stroud-Seabrook, a copartnership, L. S. Stroud, R. S. Seabrook, C. M. Elliott, Carlos Tavares, Henry M. Page and Don F. Gates, some of the defendants in the above entitled action, filed their and the first notice of appeal from the judgment in the above entitled action to the United States Circuit Court of Appeals, Ninth Circuit, on August 26, 1947; and that said defendants filed their designation of portions of the record on appeal on the third day of September, 1947; and

It further appearing that plaintiff United States of America requires additional time for the purpose of serving and filing a designation of additional portions of the record, proceedings and evidence to be included in the record on appeal;

Now, Therefore, It Is Hereby Stipulated by and between plaintiff and defendants Tavares Construction Company, Inc., a corporation, Concrete Ship Constructors, a joint venture, Stroud-Seabrook, a copartnership, L. S.